

Human Rights & Business Country Guide

Malawi

Citizens for Justice Malawi
Danish Institute for Human Rights

August 2015



THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

How to Use this Guide

This Human Rights and Business Country Guide contains information regarding the potential and actual human rights impacts of businesses operating in Malawi. The information in this Guide is gathered from publicly available sources, and is intended to help companies respect human rights and contribute to development in their own operations and those of their suppliers and business partners.

About the Human Rights and Business Country Guide

The Human Rights and Business Country Guide provides country-specific guidance to help companies respect human rights and contribute to development.

For companies to manage their potential human rights impacts, they must have comprehensive information about the local human rights context in which they operate. The Country Guide provides a systematic overview of the human rights issues that companies should be particularly aware of. For each issue, it provides guidance for companies on how to ensure respect for human rights in their operations or in collaboration with suppliers and other business partners.

The Country Guide is not only a resource, but a process. This Guide was produced through a systematic survey carried out by the Danish Institute for Human Rights (DIHR) and Citizens for Justice. The aim of this Guide is to improve the human rights practices of companies operating in Malawi, including through facts-based dialogue regarding the issues presented here.

How the Human Rights and Business Country Guide can be used by companies

- Develop company policies and procedures related to human rights issues in the local environment.
- Assess and track the potential human rights impacts of your own operations or in suppliers, business partners and investments.
- Raise awareness among staff, suppliers and other business partners.
- Engage with workers, potentially affected communities, consumers and other stakeholders whose human rights might be affected by your operations.
- Engage with civil society organisations, government bodies or international organisations on human rights-related issues.
- Provide background information for auditors.
- Establish or collaborate with mechanisms for workers, communities and other whose human rights might be affected by your operations.
- Contribute to development initiatives that align with human development needs and priorities in the local context.

How the Human Rights and Business Country Guide can be used by governments

- Review and reform public policy and legislation relevant to the human rights impacts of business, including in the areas of labour, environment, land, equal treatment, anti-corruption, taxation, consumer protection or corporate reporting.
- Ensure respect for human rights in the state's own business affairs such as state-owned companies, sovereign wealth funds and other investments, public procurement, development assistance, export credit and other activities.

- Build awareness and capacity on human rights and business issues within relevant areas of public administration.
- Provide targeted advice to domestic companies.
- Inform the development of trade policy, trade and investment agreements and trade and investment promotion.
- Improve effective access to judicial and non-judicial remedies for victims of business-related human rights abuses.
- Enhance the contribution of the private sector in national and regional development programmes relevant to human rights.

How the Human Rights and Business Country Guide can be used by civil society organisations

- Inform human rights research and monitoring related to business operations.
- Work with affected workers and communities to define human rights and human development priorities related to the role of business.
- Provide capacity-building to government, business and civil society stakeholders on human rights and business.
- Work with local stakeholders to provide recommendations to business and government.
- Facilitate dialogue and engagement with, including multi-stakeholder forums, with state agencies and businesses.

The Country Guide aims to work with all stakeholders to promote, monitor and expand the activities described above. We request that all stakeholders who use the findings of the Country Guide in their work notify the Country Guide team of their activities and lessons learned. These experiences will be included in the Country Guide website, HRBCountryGuide.org.

Country Guide Process

The Malawi Country Guide was produced by the Danish Institute for Human Rights (DIHR) and Citizens for Justice Malawi (CFJ).

The Country Guide is a compilation of publicly available information from international institutions, local NGOs, governmental agencies, businesses, media and universities, among others. International and domestic sources are identified on the basis of their expertise and relevance to the Malawian context, as well as their timeliness and impartiality.

The initial survey of publicly available, international sources was carried out by DIHR from January to December 2014. The draft was then updated and localized by CFJ from January to March 2015.

The completed Country Guide aims to provide a comprehensive overview, on the basis of the information available, of the ways in which companies do or may impact human rights in Malawi. The current Country Guide is not meant as an end product, or a final determination of country conditions. It is intended to be the basis, and the beginning, of a process of dissemination, uptake and modification. DIHR and PILER seek further engagement with local stakeholders, and intend to update the Country Guide on that basis.

Country Guide Content

The Country Guide contains the following information:

Areas for Attention

Each section of the Country Guide identifies areas for particular attention by businesses. The Country Guide identifies these areas through an analysis of the country's legal framework for human rights protection; enjoyment of human rights in practice; and the proximity of third-party human rights violations to company operations.

The headline and risk description describe the relevance of each issue for businesses. The text that follows the risk description presents the quantitative and qualitative information upon which this determination was based.

- **Background & Context** gives an overview of economic, political and demographic characteristics.
- **Rights Holders at Risk** identifies groups that may be vulnerable to workplace discrimination or community impacts.
- **Labour Standards** identifies areas for attention related to employees and working conditions. This section includes child labour, forced labour, trade unions, occupational health & safety and working conditions.
- **Community Impacts** identifies areas for attention related to communities whose human rights may be affected by company operations. This section includes impacts related to environment, land & property, revenue transparency & management and security & conflict.
- **Sector Profiles** identifies human rights and business impacts related to a particular industry sector, such as extractive operations, manufacturing or agriculture.
- **Region Profiles** identifies regions of the country where the risk of adverse human rights impacts differs markedly from the national profile. This may include underdeveloped regions, export processing zones or conflict areas.

Cases

Each rights issue includes cases from media and law where the rights issue in question has been allegedly violated. These cases are drawn from the Business and Human Rights Resource Centre, international and local NGOs and stakeholder consultations. The cases presented here should not be considered comprehensive.

Access to Remedy

Victims of corporate human rights abuses have the right under international law to mechanisms that provide for remedy. The UN Guiding Principles on Business and Human Rights explicitly obligate governments and businesses to provide and/or participate in such mechanisms.

The Country Guide includes information under each rights area about the remedy mechanisms available to redress violations of the right. Where possible, this also includes practice information about the effectiveness of such bodies, and the number of cases they have heard and redressed.

Human Rights Guidance for Businesses

This section includes guidance for businesses to prevent and mitigate their adverse human rights impacts. This guidance is drawn from the Danish Institute for Human Rights' (DIHR) existing library of human rights due diligence recommendations, as well as international frameworks, principles and

guidelines. Where available, this section includes recommendations issued by local NGOs and directed specifically at companies operating in the country.

This section also includes examples of initiatives carried out by companies to mitigate their human rights impacts. These are organized into Due Diligence Initiatives—activities that aim to meet the company’s responsibility not to violate human rights—and Beyond Compliance Initiatives—activities that aim to contribute to development beyond this baseline obligation.

Engagement Opportunities

Companies have a responsibility to prevent negative human rights impacts, but they also have an opportunity to contribute to positive human rights impacts. Each section of this Guide includes information for companies to link their policies and community engagement processes to ongoing governmental and institutional efforts to promote and fulfil human rights.

This includes Public Sector Initiatives—activities where the government is aiming to fulfil or promote the right in question through discrete programmes—as well as Development Priorities—themes identified by international institutions as warranting deliberate attention, or where companies could have the greatest impact with their development initiatives.

The purpose of the information in this section is to inspire further efforts and engagement by businesses, as well as to identify existing programmes that companies could support or take part in.

About DIHR

The Danish Institute for Human Rights is a National Human Rights Institution accredited under the UN Paris Principles, and carries out human rights and development programmes in Denmark and around the world. Since 1999, the Danish Institute has worked closely with the business and human rights communities to develop tools and standards for better business practice.

For more information, see humanrights.dk

About Citizens for Justice

Citizens for Justice-(CFJ) is a non-profit organization advocating for good governance and environmental, economic and social justice in Malawi. Founded in 2005, CFJ’s core mission is to speak with and for the poor and the voiceless so that they take part in development processes. CFJ carries out research, advocacy and lobbying toward an empowered Malawian society in which individuals and communities have secure access to information, justice and sustainable livelihoods. CFJ is specifically committed to working with and on behalf of the marginalized.

For more information, see cfjmalawi.org

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Background & Context

Overview of political and socio-economic conditions in which businesses operate. This information is designed to inform businesses of the broader political and development trends in the country.

Demographics & Economy	
Population	17,377,468 (2014)
Ethnic Groups	Chewa 32.6%, Lomwe 17.6%, Yao 13.5%, Ngoni 11.5%, Tumbuka 8.8%, Nyanja 5.8%, Sena 3.6%, Tonga 2.1%, Ngonde 1%, other 3.5%
Religious Groups	Christian 82.6%, Muslim 13%, other 1.9%, none 2.5% (2008 est.)
Languages	English (official), Chichewa (common), Chinyanja, Chiyao, Chitumbuka, Chilomwe, Chinkhonde, Chingoni, Chisena, Chitonga, Chinyakyusa, Chilambya

Political Context

Governance structures and political developments

Formally known as the British protectorate of Nyasaland, Malawi gained its independence in 1964 after a long and occasionally violent struggle between supporters of the British colonial authorities and proponents of independence.¹ After independence, a one-party authoritarian regime ruled the country for 30 years.² In 1994, the first presidential and municipal elections were held, a new constitution was drafted, political prisoners were freed and freedom of speech and other rights were re-established.³

In May 2014, tripartite elections (presidential, parliamentary and local council) took place; Peter Mutharika was chosen as president, with 36.4 percent of the votes. The elections, according to a 2014 Nyasa Times report citing the Malawi Electoral Commission, were marred by massive irregularities such as premature discarding of ballot papers; polling centre officers signing for results of other polling centres, late delivery of polling material to polling centres and number of voters exceeding by far the number of registered voters.⁴ In 2014, the European Union reported, however, that 'no substantiated evidence of systematic rigging was presented or revealed by the EU' and that the elections were conducted in an orderly, calm and peaceful matter.⁵ In 2014 the African Union stated that the elections were largely fair and transparent.⁶

Former President Joyce Banda's administration addressed some of Malawi's governance issues by repealing a range of laws that disrespected human rights and freedoms guaranteed in Malawi's

constitution.⁷ Freedom House reported in 2013 that this resulted in improved relations with the international donor community, which had suffered greatly in previous years.⁸

For many decades, Malawi has been in a dispute with Tanzania over Lake Malawi, a lake between the two countries that is the third largest and second deepest in Africa. Tanzania claims half of the lake's northern part, while Malawi claims ownership up to the eastern shoreline.⁹ The latest wave of disputes occurred in 2011, when Malawi awarded exploration licenses for companies to search for oil in the lake. Tanzania immediately objected, and blocked exploration until the dispute was settled.¹⁰ As of 2015, no resolution has been made.

Reporters Without Borders highlighted that Malawi rose more than any other country in its 2013 Press Freedom Index.¹¹ According to the Bertelsmann Foundation (BTI) in 2014, freedom of expression had some limitations. State-controlled radio and television stations were reportedly biased toward the government and the ruling party, though numerous independent private radio stations were also in operation.¹²

Socio-Economic Context

Human development indicators and trends

The Republic of Malawi is a landlocked country, sharing borders with Zambia, Tanzania and Mozambique. Malawi is one of the most densely populated states in Africa.¹³

Malawi's Human Development Index score for 2014 was 0.414, 174th out of 187 countries, indicating low human development.¹⁴ In 2010, Malawi's Gini coefficient was 46.2, indicating one of the highest rates of income inequality in Africa.¹⁵ Of its more than 15 million people, 50.7 percent lived in poverty according to Malawi's National Statistical Office in 2011.¹⁶

Most of Malawi's population relied on subsistence farming. The BBC reported in 2013 that food supply was precarious, and the country was prone to natural disasters including drought and heavy rainfalls. Food insecurity caused Malawi to be dependent on thousands of tonnes of food aid every year.¹⁷

A 2013 World Bank study noted that life expectancy had improved from 46 years in 2000 to 54.8 years in 2012.¹⁸ Though still high, HIV prevalence had fallen from 17.5 percent to 10.3 percent in the same period.¹⁹

According to a 2013 BBC report, Malawi had made significant progress in achieving economic growth since 2007, largely due to programmes instituted by the government. Healthcare, education and environmental conditions had reportedly improved, and Malawi had become significantly less dependent on overseas aid.²⁰

Malawi's government reported in 2013 that it was likely to achieve four of its eight Millennium Development Goals: Reduce child mortality; combat HIV and AIDS, Malaria and other diseases; ensure environmental sustainability; and develop global partnership for development. Those concerning poverty; gender inequality; universal primary education; and maternal mortality rates were unlikely to be met.²¹

Malawi's long-term development strategy, Vision 2020, prioritises sustainable economic growth, infrastructure development, food security, science and technology and sustainable environmental management.²²

World Bank's Country Partnership Strategy for Malawi 2013-2016 identified the following objectives for Malawi: promoting sustainable, diversified and inclusive growth; enhancing human capital and reducing vulnerabilities.²³

Political, Economic & Development Statistics

Quantitative indicators and country rankings

Country Rankings & Ratings			
	2008	2011	2014
Reporters Without Borders: Press Freedom Index <i>(Where 1 indicates the highest degree of freedom)</i>	92 (2007)	79 (2010)	75 (2013)
Freedom House: Map of Freedom - Political Rights <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	4	3	3
Freedom House: Map of Freedom - Civil Liberties <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	4	4	4
Form of government	Multiparty electoral democracy		
Most recent general election	20 May 2014		
Current head of state	President Arthur Peter Mutharika		
Ruling party	Democratic Progressive Party		
Other major parties	<ul style="list-style-type: none"> • Alliance for Democracy or AFORD • Malawi Congress Party or MCP • Malawi Democratic Party or MDP • Malawi Forum for Unity and Development or MAFUNDE • New Labour Party or NLP • New Republican Party • People's Progressive Movement or PPM • People's Transformation Movement or PETRA • United Democratic Front or UDF 		

Development Indicators & Trends			
	2010	2011	2013
GDP growth	6.5	4.3	5.0
GDP growth in region / neighbouring countries	5.1 (Sub-Saharan Africa)	4.2 (Sub-Saharan Africa)	4.2 (Sub-Saharan Africa)
GDP per capita (PPP)	US\$359.6	US\$364.1	US\$226.5
Human Development Index rank	153	171	174
Human Development Index score	0.385	0.400	0.502
Human Development Index score – Regional Average	0.389 (Sub-Saharan Africa)	0.463 (Sub-Saharan Africa)	0.414 (Sub-Saharan Africa)
HDI discounted for inequality	0.261	0.272	0.282
Gini coefficient	43.9	n/a	n/a
Percentage of population below national poverty rate	50.7	n/a	n/a
Percentage of population below absolute poverty rate (\$1.25 per day)	72.2	n/a	n/a

International Legal Commitments

Accession and ratification of international human rights instruments

UN Conventions	
International Covenant on Economic, Social and Cultural Rights	ACCEDED
International Covenant on Civil and Political Rights	ACCEDED
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty	NOT SIGNED
Convention Against Corruption	RATIFIED
Convention Against Torture	ACCEDED
Convention on the Elimination of All Forms of Racial Discrimination	ACCEDED
Convention on the Elimination of All Forms of Discrimination Against Women	ACCEDED
Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women (1995)	NOT SIGNED
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	SIGNED
Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (1968)	NOT SIGNED
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	NOT SIGNED
Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (1992)	NOT SIGNED
Convention on the Rights of Persons with Disabilities	RATIFIED
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	NOT SIGNED
Convention on the Rights of the Child	ACCEDED
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	RATIFIED
Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	RATIFIED
International Convention for the Protection of All Persons from Enforced Disappearance (2006)	NOT SIGNED
International Convention on the Protection of All Migrant Workers and Members of Their Families	NOT SIGNED
Convention Against Transnational Organized Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime	RATIFIED ACCEDED

Regional Instruments	
African Charter on Human and People's Rights	RATIFIED
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa	ACCEDED
African Convention on the Rights and Welfare of the Child	RATIFIED
African Convention on Nature and Natural Resources	ACCEDED
African Union Convention on Preventing and Combating Corruption	RATIFIED
International Labour Organization Conventions	
ILO Hours of Work (Industry) Convention (C1, 1919)	NOT RATIFIED
ILO Forced Labour Convention (C29, 1930)	RATIFIED
ILO Hours of Work (Commerce and Offices) Convention (C30, 1930)	NOT RATIFIED
ILO Night Work of Young Persons (Non-Industrial Occupations) Convention (C79, 1946)	NOT RATIFIED
ILO Labour Inspectors Convention (C81, 1947)	RATIFIED
ILO Freedom of Association and Protection of the Right to Organise Convention (C87, 1948)	RATIFIED
ILO Night Work of Young Persons Employed in Industry Convention (C90, 1948)	NOT RATIFIED
ILO Protection of Wages Convention (C95, 1949)	NOT RATIFIED
ILO Right to Organise and Collective Bargaining Convention (C98, 1949)	RATIFIED
ILO Equal Remuneration Convention (C100, 1951)	RATIFIED
ILO Social Security (Minimum Standards) Convention (C102, 1952)	NOT RATIFIED
ILO Abolition of Forced Labour Convention (C105, 1957)	RATIFIED
ILO Discrimination (Employment and Occupation) Convention (C111, 1958)	RATIFIED
ILO Social Policy (Basic Aims and Standards) Convention (C117, 1962)	NOT RATIFIED
ILO Equality of Treatment (Social Security) Convention (C118, 1962)	NOT RATIFIED
ILO Employment Policy Convention (C122, 1964)	NOT RATIFIED
ILO Minimum Age (Underground Work) Convention (C123, 1965)	NOT RATIFIED
ILO Medical Care and Sickness Benefits Convention (C130, 1969)	NOT RATIFIED
ILO Minimum Wage Fixing Convention (C131, 1970)	NOT RATIFIED

ILO Holidays with Pay (Revised) Convention (C132, 1970)	NOT RATIFIED
ILO Workers' Representatives Convention (C135 of 1971)	NOT RATIFIED
ILO Minimum Age Convention (C138, 1973)	RATIFIED
ILO Migrant Workers (Supplementary Provisions) Convention (C143, 1975)	NOT RATIFIED
ILO Working Environment (Air Pollution, Noise and Vibration) Convention (C148, 1977)	NOT RATIFIED
ILO Occupational Safety and Health Convention (C155, 1981)	NOT RATIFIED
ILO Workers with Family Responsibilities Convention (C156, 1981)	NOT RATIFIED
ILO Termination of Employment Convention (C158, 1982)	RATIFIED
ILO Indigenous and Tribal Peoples Convention (C169, 1989)	NOT RATIFIED
ILO Night Work Convention (C171, 1990)	NOT RATIFIED
ILO Prevention of Major Industrial Accidents Convention (C174, 1993)	NOT RATIFIED
ILO Worst Forms of Child Labour Convention (C182, 1999)	NOT RATIFIED
ILO Maternity Protection Convention (C183, 2000)	NOT RATIFIED
Environmental Instruments	
Stockholm Convention on Persistent Organic Pollutants (2001)	RATIFIED
Kyoto Protocol (1997)	ACCEDED
United Nations Convention on Biological Diversity	RATIFIED
United Nations Framework Convention on Climate Change	RATIFIED
Montreal Protocol on Substances that Deplete the Ozone Layer, 1987	ACCEDED
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, 1989	ACCEDED
Other International Instruments	
Declaration on the Rights of Indigenous Peoples	SIGNED
Rome Statute of the International Criminal Court	RATIFIED
UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	RATIFIED

Rights Holders at Risk in the Workplace

Societal groups and workers who may be at particular risk of employment-related discrimination and poor labour conditions

Operating Environment		
	Malawi	Sub-Saharan Africa
HIV/AIDS prevalence (ages 15-49)	10.8 (2012)	4.7 (2012)
Female labour participation rate	85 (2012)	63.5 (2012)
Labour force	5.747 million (2007 est.)	
Percentage of population who are 15-24 years	20.2 (2014)	
Sectors contributing to GDP	Agriculture: 30.1% ²⁴ Industry: 18.5 % Services: 51.3 %	
Major ethnic groups	Chewa 32.6%, Lomwe 17.6%, Yao 13.5%, Ngoni 11.5%, Tumbuka 8.8%, Nyanja 5.8%, Sena 3.6%, Tonga 2.1%, Ngonde 1%, other 3.5%	
Major tribes	Chewa/Nyanja (2.5 million), Lomwe (2.5 million), Yao (1 million), Tumbuka (0.9 million) and Nyakyusa/Ngonde (0.3 million) (2007)	
Major religious groups	Christian 82.6%, Muslim 13%, other 1.9%, none 2.5% (2008 est.)	
Major migrant groups	India, the United Kingdom, Zimbabwe and the United States of America.	
Persons with disabilities	498,122 or 4.0 percent (2008 est. by Malawi Population and Housing Census)	

Maternity leave	Minimum 8 weeks within every three years
Law prohibits discrimination on the grounds of State prohibited ground of discrimination in the constitution	The constitution states that discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.
Relevant legislation	<ul style="list-style-type: none"> • Constitution of Malawi, 1994 • Penal Code, 1999 • Employment Act, 2000 • Disability Act, 2012 • Gender Equality Bill, 2013
Recognition of indigenous groups in law	Entire population is considered indigenous
Responsible ministries and other state bodies responsible	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Health • Ministry of Persons with disabilities and the elderly • Ministry of Gender, Children and Community Development • Malawi National AIDS Commission
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Parents of Disabled Children Association in Malawi (PODCAM) • The Federation of Disabled Peoples Organization in Malawi (FEDOMA) • Malawi Human Rights Resource Centre • Malawi Business Coalition against HIV/AIDS

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The constitution states that discrimination of persons in any form is prohibited and all persons are guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.²⁵ the constitution recognizes the right to development, which includes measures to guarantee equality of opportunity for all in their access to employment.²⁶

The Employment Act contains an explicit prohibition against discrimination on grounds of race, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other marital status or family responsibilities.²⁷

Furthermore, the constitution and the Employment Act state that every employer shall pay employees remuneration for work of equal value without distinction or discrimination of any kind, on basis of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities.^{28 29}

Ethnic Discrimination

Malawian nationals may be discriminated against in favour of foreign workers.

According to a 2014 Danish Trade Union Council for International Development Cooperation report, many skilled immigrants had been brought to Malawi, primarily from India, the United Kingdom, Zimbabwe and the United States, to fill skills shortages.³⁰

Various media sources reported discrimination against Malawian nationals in favour of migrant workers.³¹ Malawian labourers were reportedly dismissed and replaced by non-nationals or were the victims of prejudice that portrayed them as potential thieves.³² It is not clear to what extent this is a widespread problem in Malawi, but media reports contribute to a public perception that this is the case.

Persons with Disabilities

Persons with disabilities may be at risk of limited access to employment and workplace discrimination. Particular attention should be given to the areas of access to workplace facilities, women with disabilities and hiring.

The constitution guarantees the right to non-discrimination on the basis of disability.³³ The Disability Act was passed in 2012 and guarantees the right to non-discrimination in training and employment and access to buildings. Non-compliance with the law is subject to fines, imprisonment or revocation of license.³⁴

According to the latest Census, from 2008, approximately 500,000 persons in Malawi had disabilities.³⁵ The World Bank reported in 2011 that the prevalence rate of persons with disabilities in Malawi was 13 percent among working age individuals.³⁶ Few persons with disabilities had access to employment, according to the Open Society Initiative for Southern Africa in 2010.³⁷ Also in 2010, the Norwegian Association of Disabled reported that unemployment rates were significantly higher among women with disabilities.³⁸

The Open Society Initiative reported in 2012 that most buildings had limited access for persons with disabilities, making it difficult for them to work.³⁹ Enable Scotland reported that only 5 percent of persons with disabilities who needed occupational training received it.⁴⁰

Persons Living with HIV/AIDS

Persons living with AIDS/AIDS may be at risk of workplace discrimination. Particular attention should be given to the southern regions and the issue of workplace privacy.

An estimated 1 million Malawians were living with HIV/AIDS, according to UNAIDS.⁴¹ The World Health Organization reported an adult HIV prevalence rate of 10.3 percent in 2013, one of the highest in the world.⁴² Women reportedly had a higher prevalence rate than men (12 percent vs. 8 percent).⁴³

The government reported in 2014 that prevalence has been declining since 1999 when it peaked at 16.4 percent. Urban communities in the southern regions reported the highest HIV/AIDS rates, while female sex workers, female border traders, long-distance truck drivers, police officers, estate workers and fishermen were among the highest-risk populations.⁴⁴

The U.S. Department of State reported in 2014 HIV/AIDS discrimination was a problem in the private sector.⁴⁵ UNAIDS reported in 2012 that discrimination made it difficult for persons living with HIV/AIDS to get jobs, and resulted in stigma and harassment in the workplace.⁴⁶

UNAIDS noted however that over the last couple of years, discrimination and stigma in the workplace were reduced. This was supported by many businesses running programmes educating people about the risks, prevention methods and general realities of the disease. It reportedly proved an effective tool in combatting discrimination.⁴⁷

Tribal Discrimination

Tribal minorities may be at risk of discrimination in the workplace.

The constitution states that discrimination of persons in any form is prohibited, including on grounds of race or ethnic origin.⁴⁸

According to the latest Census, from 2008, 12 tribes existed in Malawi. The largest tribes were the Chewa, Lomwe, Yao and Ngoni.⁴⁹ These tribes would be considered by non-Malawians to be 'indigenous peoples', but Malawi considers the entire population to be indigenous, so they are referred to locally as 'tribes'. They are concentrated in the central regions of the country.

The Chewas is the largest tribal community and comprised around 4.2 million people, representing approximately 32 percent of the population, followed by the Lomwe with 2.3 million and the Yao with 1.7 million.⁵⁰

Sexual Minorities

Lesbian, gay, bisexual and transgender persons may be denied access to employment or discriminated against in the workplace. Particular attention should be given to access to workplace grievance mechanisms and privacy.

The constitution guarantees non-discrimination on grounds of sex, but does not explicitly prohibit discrimination on grounds of sexual orientation.⁵¹ The Penal Code of Malawi criminalises homosexuality as 'unnatural offences' and 'indecent practices' and sets penalties of up to 14 years imprisonment, with or without corporal punishment.⁵²

The government stated in 2012 that the provisions of the Penal Code on homosexuality were suspended, according to Amnesty International in 2013.⁵³ The UN Human Rights Committee noted that the criminalization of consensual same-sex sexual activity among consenting adults occurred as of 2014.⁵⁴

Women

Women may be at risk of discrimination in the workplace. Particular attention should be given to the areas of hiring, informality, working conditions, maternity and pregnancy, sexual harassment and the agriculture sector.

The constitution guarantees women the right to full and equal protection by law, and the right not to be discriminated against on the basis of gender or marital status. The constitution establishes that any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, including in the workplace.⁵⁵

The government passed the Gender Equality Bill in 2013 aimed at promoting gender equality and equal integration of men and women in all functions of society, prohibiting sex discrimination, harmful practices and sexual harassment.⁵⁶ Women are entitled to eight weeks' maternity leave every three years.⁵⁷ The international standard is 12 weeks' maternity leave.

In spite of the existing provisions aiming to tackle gender inequality, the Committee on the Elimination of Discrimination against Women (CEDAW) stated in 2014 that the government noted that women continued to lose employment or benefits due to pregnancy and the number of cases was increasing.⁵⁸

The World Bank reported that 85 percent of the female population participated in the labour force as of 2013.⁵⁹ Furthermore, the proportion of women in wage employment was 20 percent, according to a 2012 study published by the Institute of Development and Labour Law of Cape Town University (IDLL).⁶⁰ The U.S. Department of State reported in 2013 that women who participated in the formal labour market accounted for a very small proportion of managerial and administrative staff.⁶¹ A congressman, cited in a 2013 Nyasa Times article, said that women seeking job opportunities were sometimes asked for sexual favours before being considered for a position.⁶²

The IDLL further reported that women had lower wages than men and were more likely to work in the agriculture and informal sectors.⁶³ A 2014 report by the Studies in Poverty and Quality Institute noted that the low participation of women in the formal economy and their over-representation in the informal sector was due to the lower education levels and persistent patriarchal traditions to keep women in the private sphere.⁶⁴

Working conditions in the informal sector were reportedly characterised by lower wages, precarious conditions and lack of social security coverage, impacting women's welfare and that of their households.⁶⁵

The U.S. Department of State noted in 2014 that 52 percent of full-time farmers were women.⁶⁶ The same year, according to a World Bank study, female farmers had limited access to agriculture inputs such as fertilisers and extension services, resulting in a 25 percent lower agricultural productivity per hectare than men.⁶⁷ Wage Indicator reported in 2009 that the service sector also showed a high proportion of female workers.⁶⁸

Violence against women was widespread, according to Human Rights Watch in 2014.⁶⁹ The Nyasa Times reported in 2013 that gender-based violence was prevalent on Malawi's sugar plantations. Many employers reportedly took advantage of illiterate workers; most cases were not reported because victims preferred to protect their jobs.⁷⁰

The Gender Equality Bill also prohibits sexual harassment, including in the workplace. The law requires employers to develop and implement policies and procedures to eliminate sexual harassment at the workplace.⁷¹ My Wage reported that many cases of sexual harassment in the workplace occurred, but were not reported.⁷² In 2013, Equal Times reported cases of harassment and sexual discrimination against women in tea estates.⁷³

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

The Industrial Relations Court (IRC) has the mandate to investigate labour disputes and other issues related to employment. Cases brought to the IRC must first be registered at the Ministry of Labour.⁷⁴

The Judicial System in relation to civil matters was impartial, according to a 2014 report by the U.S. Department of State.⁷⁵ Some labour cases were reportedly delayed due to lack of resources and capacity.⁷⁶

At the administrative level, the Department of Labour Services under the Ministry of Labour has the authority to play a conciliatory, mediatory role between employers and workers on labour matters. It conducts investigations of allegations of violations of worker's rights.⁷⁷ In 2010, the International Labour Organization reported that an independent alternative dispute resolution mechanism was absent, thus the Ministry of Labour tried to act as one.⁷⁸

Malawi has various bodies established by the constitution for addressing human rights violations.⁷⁹ One of these is the Human Rights Commission (HRC), Malawi's National Human Rights Institution. The HRC investigates cases of human rights violations on its own volition or upon complaints received from individuals, groups or bodies.⁸⁰ In 2012, the UN Human Rights Committee expressed concern regarding the HRC's independence and a significant resource shortfall that resulted in a backlog of cases. In relation to gender discrimination, the HRC is mandated to monitor the practices of the private sector.⁸¹

The Office of the Ombudsman also investigates and resolves cases of alleged injustice and provides remedies.⁸² The Office, according to a 2013 Nyasa Times report, went under a restructuring in order to expedite the resolution of cases as a result of insufficient resources and shortage of staff.⁸³

At the international level, the African Court on Human and Peoples Rights was used for a case involving wrongful and unfair termination of employment. However, the Court decided that it did not have the jurisdiction to receive the application, as the case was an appeal to the Malawi Supreme Court of Appeal. The Court stated that it did not have the mandate to consider appeals by a domestic court.⁸⁴

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **January 2014, Nyasa Times:** Malawian workers reportedly faced corporal punishment and severe harassment by Chinese employers at the construction site of the National Stadium in Lilongwe.⁸⁵
- **July 2014, The Oracle Times:** A Chinese construction company allegedly applied physical searches and screening to its Malawian workers and did not provide them with protective clothing on suspicion of theft.⁸⁶

- **June 2013, *Equal Times*:** The police in the Neno district in southern Malawi reported that Thai workers employed by the construction company Mota Engil had been exposed to a number of xenophobic attacks since the company unfairly dismissed 1,500 Malawian workers and replaced them with 3,000 Thais.⁸⁷
- **May 2013, *Nyasa Times*:** Female workers in the southern cities of Blantyre and Zomba complained they were sexually molested by their employers and were forced to tolerate it to keep their jobs.⁸⁸
- **March 2013, *Nyasa Times*:** Female workers on sugar plantations reportedly suffered from abuse at a rate of 10-15 cases per month. Workers tolerated such abuse due to fears of losing their jobs. The courts were said to be lenient on punishments in these cases of gender-based violence against women.⁸⁹

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Due Diligence Initiatives

Tree Crops: The company developed a Policy on HIV/AIDS in the Workplace to guide the management and treatment of employees living with HIV/AIDS. The policy aims to: ensure employees' sustained productivity; promote effective prevention of HIV/AIDS among all employees, their families and the broader society; and facilitate internal capacity-building through increased awareness of HIV/AIDS by all employees. To prevent discrimination in the workplace, all information related to employees' HIV status is kept confidential. 90

Blantyre Newspapers Limited: The company's workplace policy guarantees that information on HIV/AIDS is be provided to all employees, including their families and the surrounding communities.91

Siemens: The electronics company, with operations in Malawi, adopted Guiding Principles for Promoting and Managing Diversity. The company states that it does not tolerate discrimination or harassment of any kind at the workplace; promotes employment of persons with disabilities; integrates women at all levels, including top management; and ensures equal opportunities for personal development and personal growth. 92

Paladin Energy: The mining company developed and implemented its Human Rights Policy, which is reviewed annually. The policy outlines the company's respect for the human rights enshrined in international human rights instruments as well as international labour standards.93

Company Beyond Compliance Initiatives

Illovo Sugar: The company implements extensive employee development and continuous improvement programs, including in-depth training at internal facilities and external institutions.94 In 2014, the company provided 4,500 employees and their families with housing, electricity, water, sewage and waste services.95

Blantyre Newspapers Limited: The company provides nutritional, medical and psychological support to employees and their families living with HIV/AIDS and aims to eradicate stigma and discrimination against employees living with HIV/AIDS.96

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Discrimination

Does the company ensure that employment-related decisions are based on relevant and objective criteria?

- The company identifies different types of discrimination, including those rooted in formal structures and cultural traditions.
- It is company policy to ensure that decisions concerning hiring, wages, promotion, training, discipline, retirement and termination are based only on unbiased criteria, and are not linked to any of the discriminatory characteristics listed in the description for this question.
- Each job category in the company has a written description stating the salary level and the qualifications required for that job category.
- The company ensures that employment advertisements do not reference discriminatory criteria, such as race, gender or age (unless listed as part of a legal equal opportunities promotion).
- The company ensures that job applicants are not asked to give information about their marital status, pregnancy, intent to have children, number of dependents, or similar information that may lead to discriminatory hiring decisions.
- All hiring managers receive training regarding the company's non-discrimination policies.
- The company has established a procedure, accessible and known to all workers, where workers can safely report incidents of workplace discrimination.
- The company takes reasonable steps to enable qualified persons with disabilities or health conditions to gain employment opportunities with the company, for example by providing wheel chair access, flexible working hours, longer breaks etc.

Fair Treatment

Does the company protect workers from workplace harassment including physical, verbal, sexual or psychological harassment, abuse, or threats?

- The company has a commitment to prevent workplace harassment.
- The company actively informs workers of their obligations to refrain from violent, threatening or abusive conduct.
- Managers receive training on how to identify and deal with instances of harassment in the workplace.
- The company investigates all complaints of workplace harassment and takes appropriate preventative and disciplinary action including reporting of criminal actions to the appropriate authorities.

- Does the company respect the privacy of its employees whenever it gathers private information or monitors the workplace?

Privacy

The company has a procedure stating which kinds of workplace monitoring are allowed; what kind of personal worker information is retained; where it is stored; who has access; and why the information is necessary.

- Workers are made aware of all workplace monitoring, including cameras and Internet or e-mail monitoring, and the specific purpose of the monitoring.
- The company obtains the worker's prior written consent before gaining information from an individual with whom the worker has a privileged relationship, including a former employer, doctor or lawyer.
- Workers have access to all personal data collected about them, including data concerning disciplinary decisions and data obtained through monitoring, but excluding confidential management specific information related to performance evaluations, salary negotiations, promotions, rotation and similar employment decisions.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **International Labour Organization Core Labour Standards on Non-discrimination and the ILO Bureau for Gender Equality:** Non-discrimination comprises one of the four core areas of the ILO Declaration on Fundamental Principles and Rights at Work, which comprises the ILO core labour standards. The ILO integrates gender throughout its work, with the objective of achieving gender equality as an essential feature of decent work. This can include advisory services, research and information dissemination, training and capacity building.
- **Oxfam Australia:** Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment (2009): This Guide is intended to inform mining company staff of potential gender impacts of mining projects and introduces some tools and approaches that can be used to conduct a gender impact assessment.
- **Women's Empowerment Principles (2010):** Developed in collaboration between UN Women and the UN Global Compact, the Women's Empowerment Principles are a set of principles for businesses offering guidance on how to empower women in the workplace, marketplace and community.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

HIV/AIDS Prevention Strategy (2013): The government of Malawi implemented various initiatives to reduce the incidence of HIV/AIDS infections, including performance-based interactive sessions, sensitisation meetings and debates at workplace facilities.⁹⁷

Training on Gender Laws (2013): The government of Malawi provided training to 120 prosecutors, magistrates and social workers on gender-related laws.⁹⁸

National HIV and AIDS Workplace Policy (2010): The government adopted the policy with the objectives of helping prevent the spread of the pandemic; mitigate its impact on workers and their families; and provide social protection to help cope with the disease. Areas of intervention included the recognition of HIV/AIDS as a workplace issue; non-discrimination in employment; gender equality; screening and confidentiality; social dialogue; and prevention, care and support as the basis for addressing the pandemic at the workplace.⁹⁹

Technical, Entrepreneurial and Vocational Education and Training Programme (2014): The government provides short, tailored course programmes and in-service training to improve the performance and productivity of the national economy. Employers are supported in addressing skills and performance gaps at the workplace.¹⁰⁰

Development Priorities

National Education Sector Plan (2008-2017): The plan prioritises the alignment of education and training to labour market demands, in part by promoting private sector participation in delivering vocational and technical training.¹⁰¹

United Nations Development Assistance Framework (2012-2016): The framework prioritises improving market access for vulnerable groups, including youth, women and persons with disabilities, to ensure participation in economic growth through decent employment and fair incomes.¹⁰²

African Development Bank Malawi Country Strategy Paper (2013 – 2017): The strategy prioritises capacity building, skills development and entrepreneurship training, particularly to women, to address unemployment and contribute to job creation to reduce poverty.¹⁰³

The International Labour Organization's Malawi Decent Work Country Programme (2011-2016): The ILO prioritises extending the creation of more and better employment and income generation opportunities, particularly for the vulnerable groups, including the youth, women and people with disabilities.¹⁰⁴

Rights Holders at Risk in the Community

Societal groups who may be at particular risk of adverse human rights impacts by businesses or who may be excluded from benefits generated by businesses activities

Operating Environment		
	Malawi	Sub-Saharan Africa
Percentage urban population	16 (2013)	37.2 (2013)
Percentage rural population	84 (2013)	62.8 (2013)
Human Development Index score	0.502 (2013)	0.414 (2013)
HDI adjusted for inequality	0.282 (2013)	0.334 (2013)
Population below PPP US\$1.25 per day (%)	72.2 (2010)	46.8 (2011)
Literacy rate, 15-24 years old (%)	72.1 (2010)	69.6 (2010)
Maternal mortality ratio (per 100,000 births)	540 (2010)	510 (2013)
Seats held by women in national parliament (%)	22,3 (2013)	22.3 (2013)
HDI Gender Equality Gap Index score	0.591(2013)	0.578 (2013)
OECD Social Institutions and Gender Rank	38 (2012)	
Life expectancy	55.3 (2013)	
Discrimination prohibited on grounds of:	The constitution states that discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality,	

	ethnic or social origin, disability, property, birth or other status.
Major tribes	<ul style="list-style-type: none"> • Chewa/Nyanja (2.5 million) • Lomwe (2.5 million) • Yao (1 million) • Tumbuka (0.9 million) • Nyakyusa/Ngonde (0.3 million)
Recognition of indigenous groups in law	Entire population is considered indigenous
Relevant Laws	<ul style="list-style-type: none"> • Constitution of Malawi, 1994 • Penal Code, 1999 • Disability Act, 2012 • Gender Equality Bill, 2013 • Employment Act, 2000 • Gender Equality Bill, 2013
Responsible agencies	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Health • Ministry of Persons with disabilities and the elderly • Ministry of Gender, Children and Community Development • Malawi National AIDS Commission
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Catholic Commission for Justice and Peace • Centre for Social Concern • Coalition against AIDS and Malaria in Malawi • Federation of Disability Organisations in Malawi • Girls Empowerment Network • Integrated Health Initiative • Innovative Development Initiative • Kasalika Community Development Organisation • Lilongwe Islamic Movement • Malawi Human Rights Resource Centre • Rumphi HIV/AIDS Education Awareness Programme • Women Legal Resources Centre • Citizens for Justice • Centre for the Development of People

- Human Rights Consultative Committee
- Centre for Human Rights and Rehabilitation
- Development Assistance from People to People
- Malawi Centre for Advice and Education on Rights
- Women and Law in Southern Africa Research and Educational Trust

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The constitution states that discrimination against persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.¹⁰⁵

Religious Minorities

Companies may affect the health, livelihoods or material well-being of religious minorities. Particular attention should be paid to Muslim communities.

According to the latest Census, from 2008, 13 percent of the population was Muslim.¹⁰⁶ In 2013, the Nyasa Times reported that some schools did not allow Muslim children to go for prayers on Fridays and to wear traditional Muslim clothing. They were also reportedly rejected access to universities on the basis of their religion.¹⁰⁷

Migrant Workers

Companies may affect the health, livelihoods or material well-being of migrants. Particular attention should be paid to nationals from China, Burundi and Tanzania.

Reports from several media sources cited Malawians' growing discontent about foreigners.¹⁰⁸ The publication Face of Malawians reported in 2012 that such tension was especially prevalent toward Chinese nationals who were trading in businesses normally dominated by Malawians.¹⁰⁹ Burundians had reportedly changed their names to local ones while conducting business in order to counter discrimination.¹¹⁰ Foreign traders from Tanzania were also subject to attacks following several cases of abuses against Malawians in Tanzania, according to a 2013 report by Banthu Times.¹¹¹

The Indigenous Business Association of Malawi reported in 2012 that Malawian business people wanted to 'end an era of foreigners monopolising small scale business.' The Association believed that the government should prioritise indigenous Malawians when awarding business contracts.¹¹²

In an attempt to protect local small-scale businesses from competition from foreign traders, the government passed the Investment and Export Promotion Bill in 2012 allowing foreign traders to work only in the country's four major cities: Lilongwe, Blantyre, Mzuzu and Zomba.¹¹³ The new law also

included more strict requirements for start-up capital, and reportedly forced Chinese traders to close down their businesses and apply for new licenses to trade in the specified cities.¹¹⁴

Tribal Discrimination

Companies may disrupt the traditional livelihoods of tribes. Particular attention should be paid to this issue when operating in Central Regions and in proximity to Chewas communities.

According to the latest Census, from 2008, 12 tribes existed in Malawi. The largest were The Chewa, Lomwe, Yao and Ngoni, concentrated in the Central Regions.¹¹⁵ These tribes would be considered by non-Malawians to be 'indigenous peoples', but Malawi considers the entire population to be indigenous, so they are referred to locally as 'tribes'.

The Chewas was the largest tribal community and comprised approximately 4.2 million people, or 32 percent of the population, followed by the Lomwe with 2.3 million and the Yao with 1.7 million.¹¹⁶ Peoples of the World Foundation reported in 2004 that Chewas communities proclaimed their own culture, tradition, ancestral beliefs and spiritual influence and were located particularly in the Central Region in areas including Lilongwe, Dedza, Kasangu, Dowa, Ntichisi, Mchinjui, Salima and Nkhota Kota.¹¹⁷

Peoples of the World Foundation also reported that Chewas considered themselves as part of the Nyanja Group of Bantu and not Malawians, and did not recognise man-made borders.¹¹⁸ Chewas spoke Chichewa, which was recognised as a national language in Malawi.

Persons with Disabilities

Companies may negatively impact the health, livelihoods or access to public services for persons with disabilities. Particular attention should be paid to this issue when conducting community consultations.

The constitution guarantees the right to non-discrimination on the basis of disability.¹¹⁹ The Disability Act was passed in 2012 and guarantees the right to non-discrimination, including in the fields of health, education, social life, culture, sports, recreation, political life and housing.¹²⁰

According to the latest Census, from 2008, approximately 500,000 people had disabilities and most lived in rural areas with limited access to education, health care and other essential services.¹²¹

The Open Society Initiative for Southern Africa reported in 2012 that persons with disabilities were among the most vulnerable and marginalised in Malawi. Ninety-eight percent of children with disabilities did not have access to education. People with mental disabilities were reportedly perceived as 'insane or mad' and oftentimes institutionalised in mental hospitals. The majority of buildings were reportedly inaccessible to persons with disabilities.¹²²

Enable Scotland reported that only 5 percent of persons with disabilities who needed welfare services received them.¹²³ The Open Society Initiative reported in 2012 that there was a culture of business, civil society and successive governments using an undesirable charity-oriented approach in dealing with the issue of disability.¹²⁴

Persons Living with HIV/AIDS

Companies may negatively impact persons living with HIV/AIDS. Particular attention should be paid to this issue when conducting community consultations.

The constitution proclaims that the state shall actively provide for the welfare and development of the people of Malawi by progressively adopting and implementing policies for adequate healthcare, commensurate with the health needs of Malawian society and international standards.¹²⁵

An estimated 1 million Malawians were living with HIV/AIDS, according to a 2013 report by UNAIDS.¹²⁶ The World Health Organization reported an adult HIV prevalence rate of 10.3 percent in 2013.¹²⁷ Women had a higher prevalence rate than men (12.9 percent vs 8.1 percent), according to UNAIDS.¹²⁸ The government stated in 2014 that the prevalence rate has been declining since 1999 when it reached a peak of 16.4 percent. Urban communities in the Southern Regions reported the highest HIV/AIDS rates.¹²⁹

An official report highlighted that anti-retroviral therapy coverage was available to 83 percent of eligible adults and children as of 2013, an increase of 18 percent in relation to 2012 figures.¹³⁰

There was significant discrimination against persons living with HIV/AIDS, according to UNAIDS in 2012.¹³¹ The same year, an Institute of Development and Labour Law of Cape Town University (IDLL) study reported that stigma was particularly severe for women.¹³² In 2014, the U.S. Department of State noted that many individuals preferred to keep silent about their status rather than seek help and risk being ostracised.¹³³ The Department of HIV and AIDS within the Ministry of Health reportedly had some success in combating HIV/AIDS stigma.¹³⁴

The 2012 IDLL study reported cases of harassment; violation of privacy; marital status discrimination and discrimination associated with the knowledge that women had a higher incidence of HIV/AIDS.¹³⁵ A Columbia University School of Public Health report noted that only one-third of pregnant women with HIV/AIDS received anti-retroviral treatment to prevent mother to child transmission.¹³⁶

Sexual Minorities

Companies may negatively impact the security of lesbian, gay, bisexual or transgender persons. Particular attention should be paid to the issues of privacy and personal security.

The constitution guarantees non-discrimination on grounds of sex, but does not explicitly prohibit discrimination on grounds of sexual orientation.¹³⁷ The Penal Code of Malawi criminalises homosexuality as 'unnatural offences' and 'indecent practices' and sets penalties of up to 14 years imprisonment, with or without corporal punishment.¹³⁸

In 2014, the UN Human Rights Committee expressed concern about the criminalisation of consensual same-sex sexual activity among adults and allegations of violence and discrimination against people engaging in same-sex relationships, including some committed by public authorities.¹³⁹ The Committee also noted that LGBTI persons did not enjoy effective access to health services due to stigma against them.¹⁴⁰

Amnesty International further reported in 2013 that in recent years, there was an increasing number of LGBTI individuals who had been harassed, discriminated against and attacked because of their real or perceived sexual orientation or gender identity.¹⁴¹

Women

Companies may disproportionately affect the health, livelihoods or material well-being of women, or may exacerbate already-existing gender disparities in development. Particular attention should be paid to the areas of gender-based violence, traditional practices and female genital mutilation.

The constitution guarantees women the right to full and equal protection by law, and the right not to be discriminated against on the basis of their gender or marital status. This includes guarantees of the same rights as men in civil law. The constitution establishes that any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly sexual abuse, harassment and violence and deprivation of property.¹⁴²

The government passed the Gender Equality Bill in 2013 aimed at promoting gender equality and equal integration of men and women in all functions of society, prohibiting sex discrimination, harmful practices and sexual harassment.¹⁴³

Women were underrepresented at all levels of education, according to the Danish Trade Union Council for International Development Cooperation in 2014.¹⁴⁴ Only 66 percent of women were literate compared to 80 percent of men, and only 17 percent had access to financial assistance, according to the World Bank in 2013.¹⁴⁵ A 2014 report published by the Studies in Poverty and Quality Institute also noted that women on average completed 3.1 years of schooling in urban areas and 2.5 in rural areas, compared to 5.1 and 4.5, respectively, compared to men.¹⁴⁶

The UN Human Rights Committee reported in 2012 that violence against women was widespread. It expressed concern in 2014 about harmful traditional practices targeting widows as well as the prevalence of female genital mutilation.¹⁴⁷

Maternal mortality rates were among the highest in the world, according to the World Bank in 2013.¹⁴⁸ The UN Human Rights Committee, in 2014, also noted that the high rates of maternal mortality and the high percentage of unsafe abortion-related maternal deaths was linked to the general criminalization of abortion.¹⁴⁹

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

Traditional or local courts run parallel to the High Court structure, and were created to facilitate access to justice to rural communities.¹⁵⁰ According to a 2012 International Bar Association report, local courts were the main source of redress for the majority of Malawians.¹⁵¹

A 2011 Danish Institute for Human Rights study noted that the closest Magistrate Courts for those living in rural villages was typically 25 to 40 kilometres away.¹⁵²

At the administrative level, the Ministry of Justice established a Legal Aid Department in order to provide representation services to remote rural communities. The Department engaged with NGOs that worked in the field in order to fulfil its mandate.¹⁵³

The Human Rights Commission (HRC), Malawi's National Human Rights Institution, has the mandate to receive individual, group or institutional complaints regarding alleged human rights violations.¹⁵⁴ The HRC received 254 complaints between January and October 2013, according to U.S. Department of State.¹⁵⁵

In 2014, the UN Human Rights Committee expressed concern over the independence of the HRC as well as its reluctance to engage on issues related to LGBT rights.¹⁵⁶ Regarding the HRC's complaint handling, the Committee noted that resource shortfalls resulted in a significant backlog of cases.¹⁵⁷

The Office of the Ombudsman was created in 1994. It investigates cases and provides remedies free of charge for people who have been subject to injustice by public agencies.¹⁵⁸ According to the International Association of Anti-Corruption Authorities in 2012, the Ombudsman performed an important semi-court role of settling cases of conflict and complaints and providing compensation.

The Office reportedly received an average of 400 to 500 complaints annually.¹⁵⁹ The government noted in 2013 that most cases corresponded to manifest injustice and unfair treatment, conduct or practice.¹⁶⁰ The Ombudsman had regional offices in Lilongwe, Blantyre and Mzuzu and also performed rural visits to

handle complaints.¹⁶¹ The Ombudsman compliments the work of the courts as an Alternative Dispute Resolution (ADR) mechanism.¹⁶²

Non-judicial, indigenous methods to resolve conflicts were commonly used in Malawi. Customary Justice Forums were a structure that resolved the vast majority of disputes and problems, according to a 2011 Danish Institute for Human Rights report.¹⁶³

Women preferred to bring cases to village mediators instead of traditional leaders or chiefs, as those processes reportedly involved public discussion over personal or intimate matters, according to a 2010 UN report.¹⁶⁴

In relation to victims of gender-based violence, the Community Policing Services Branch under the National Police has established Victims Support Units (VSU) to provide care and support. The government reported that as 2013, VSUs were present in 34 police stations, 13 police posts and 200 Support Units in 300 Traditional Authority Institutions.¹⁶⁵ The government further noted in 2013 that 30 percent of reported cases of gender violence were prosecuted.¹⁶⁶

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **January 2014, Huffington Post:** In 2011 a magistrate court sentenced three gay men to hard labour for unnatural acts and buggery. By 2014 the rights group Centre for Development of People convinced the High Court to conduct a hearing with the aim of reviewing the sentences.¹⁶⁷
- **September 2013, Banthu Times:** Tanzanian traders in Mzuzu were subject to retaliatory attacks after Malawians in Tanzania had reportedly been attacked as a result of a Tanzanian government decree aiming to expel illegal immigrants.¹⁶⁸
- **June 2013, Equal Times:** Thai workers and their community in Neno district were targeted in xenophobic attacks following the dismissal of as many as 1,500 Malawian railway workers who were then replaced by Thai nationals.¹⁶⁹

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Beyond Compliance Initiatives

Britannia Mining: The company, with operations in Nthale, implemented community investments focusing on wealth creation and distribution; mining impacts on indigenous people; and large-volume waste disposal and water treatment. It also supported initiatives aimed at improving education.¹⁷⁰

Paladin Energy: The company supported the UK-based MicroLoan Foundation to expand its activities in the Karonga region, where it provided microloans for approximately 300 rural women.¹⁷¹

Raiply Malawi: The timber processing company supported communities around its concession areas by providing them with social amenities such as health services and education infrastructure. It built a

laboratory and library at the Mtangatanga School, provided computers and desks to the education facility and opened a health clinic for surrounding communities.¹⁷²

Mkango Resources (2013-present): The company implements the Pigeon Pea Project near its Songwe Hill operations. The objective of the project is to promote farming as a business to develop the commercial capacity of community members. The company contributed 3,400 kg of high-yield hybrid seeds to farmers based on the size of their land.¹⁷³

Telecom Networks Malawi (2014-2015) : The mobile phone service operator launched a scholarship program for 18 girls with visual and hearing disabilities in the 2014/15 academic year as part of a partnership with Hope for Blind, a non-governmental organisation that works to improve the welfare of visually challenged people.¹⁷⁴

Stakeholder Recommendations

National Association of People Living with HIV and AIDS in Karonga Saul Diyoni (2014): The Association recommends that all stakeholders with projects around mining sites mainstream HIV/AIDS issues in the community and establish the health and well-being of people around mining sites as a priority.¹⁷⁵

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Community Engagement

Does the company engage with local communities on the actual or potential human rights impacts of its operations?

- The company has a commitment to engage openly with communities in and around its area of operations, prior to, during and after commencing activities that may negatively impact their access to resources (e.g. water, food, land) or livelihoods (e.g. fishing or hunting grounds).
- The company communicates and consults with local communities prior to, during and after commencing activities to prevent, reduce and mitigate impacts.
- The company takes steps to remedy the legitimate concerns of local communities regarding any negative impacts of the company's operations on the access to resources or livelihoods.
- Does the company seek to avoid involvement in human rights abuses owing to government or societal practices?

Country Risk

Does the company seek to avoid involvement in human rights abuses owing to government or societal practices?

- If operating in a country or region with systematic human rights abuses, the company seeks to become aware of and avoid the risk of contributing to, endorsing or benefiting from such abuses.
- Where the company risks involvement in systematic human rights abuses owing to government or societal practices, the company seeks to identify solutions through dialogue with other businesses, civil society organisations, experts and other relevant stakeholders, including where possible with the authorities.
- The company ensures that it does not endorse any state imposed discriminatory limitations on the right to vote, and does not pass along information concerning religious, racial, political affiliations or other characteristics of employees which could be used by the government as a reason to restrict the right to vote.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **The Forest Peoples Programme:** Established in 1990, the Programme is dedicated to supporting Indigenous Forest Peoples protect their land rights and human rights. The Programme works directly with indigenous communities, assisting them in building their own capacities and exercising their human rights.
- **IFC Performance Standard 7: Indigenous Peoples (2012):** The IFC PS7 and its accompanying guidance offer directions on how private sector projects can respect the human rights of Indigenous Peoples through following the stated requirements.
- **International Council on Mining and Metals Good Practice Guide:** Indigenous Peoples and Mining (2010): The ICMM is the industry organisation for the mining and metals sector. The Guidance provides advice to companies on how they can build effective relationships with Indigenous Peoples, as well outlining ways in which companies can effectively engage throughout the lifecycle of a project.
- **International Working Group for Indigenous Affairs (est. 1968):** IWGIA is an international human rights organization specialising in Indigenous Peoples' rights. IWGIA works to further the understanding, knowledge, and engagement with the rights of Indigenous Peoples through publications, advocacy programmes and support of local projects.
- **The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples (2009):** The Declaration is a statement on behalf of Indigenous Peoples and support organisations from 35 countries that calls on different stakeholder groups, such as extractive companies, communities and civil society organisations, to respect and uphold the recognised rights of Indigenous Peoples.
- **Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education):** The Foundation's main purpose is to work for the respect, protection and fulfilment of Indigenous Peoples' rights and the operationalization of Indigenous Peoples' self-determined sustainable development. The Foundation offers a number of relevant resources on issues such as traditional knowledge and traditional livelihoods, biodiversity and climate change.

- **UN Permanent Forum on Indigenous Issues (est. 2000):** The Forum was formed to advise the United Nations Economic and Social Council on a number of Indigenous Peoples' rights issues, such as economic and social development, culture, education, environment, health and human rights.
- **UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (est. 2001):** The Special Rapporteur mandate is to advise on and monitor the human rights situation of Indigenous Peoples. This includes country reports, promoting good practice, addressing relevant human rights violations and contributing to thematic study on topics related to Indigenous Peoples.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

HIV/AIDS Prevention Strategy (2013): The government of Malawi implemented various initiatives to reduce the incidence of HIV/AIDS infections. Actions included printed and audio materials distributed to a target of 900,000 people; performance-based interactive sessions; and sensitisation meetings and debates in schools and communities. During 2012-2013, 92 hours of programmes broadcasting HIV/AIDS messages were aired on television and a total of 342 hours of HIV/AIDS messages and information were aired on community radio stations.¹⁷⁶

Mass Adult Literacy Project (2010-2014): The project aimed to provide literacy skills to 2.4 million adults by the end of 2014.¹⁷⁷

Social Cash Transfer Programme (2006-present): The programme was designed to alleviate poverty, reduce malnutrition and improve school enrolment by delivering cash transfers to poor households that headed by the elderly, children, the chronically ill, persons with disabilities, or who were fit to work but had to care for more than three dependants. The programme was implemented in seven districts and, as of 2010, covered 98,000 beneficiaries in 24,000 households.¹⁷⁸

NGO Initiatives

Federation of Disabled Peoples Organization in Malawi: The organisation offered persons with disabilities who were refused loans from financial institutions due to their physical disabilities the opportunity to obtain loans through a microfinance project.¹⁷⁹

Micro Loan Foundation: The institution carries out activities in the Karonga region to encourage the expansion of small-scale business and provides microloans for rural women.¹⁸⁰

Development Priorities

Malawi Growth and Development Strategy II (2011-2016): Priorities in the strategy include: agriculture and food security; transport infrastructure and the Nsanje World Inland Port; energy, industrial development, education, science and technology; public health, sanitation, malaria and HIV/AIDS management; and integrated rural development.¹⁸¹

African Development Bank Malawi Country Strategy Paper (2013 – 2017): The strategy prioritises increased access to water and sanitation and increased access to financial services.¹⁸²

The World Bank Country Assistance Strategy (2013-2016): The World Bank prioritises the improved access to: quality education; reliable nutrition; HIV/AIDS services; sustainable water supply; and sanitation services.¹⁸³

Child Labour

Work that interferes with the health, development, education or family life of persons under 18

Operating Environment		
	Malawi	Sub-Saharan Africa
Net Enrolment Ratio in Primary Education (% both sexes)	n/a	77 (2012)
Percentage of pupils starting grade 1 and reaching last grade of primary	49.1 (2011)	n/a
One-year-old children immunised against measles (%)	96 (2011)	72.1 (2012)
Mortality rate of children under 5 years old (per 1,000 live births)	71 (2012)	97.9 (2012)
Percentage of population below 14	46.9 (2013)	
Legatum Prosperity Index: Education	116 (2012)	
Restrictions on children under 18 from working	Children between the ages of 14 to 18 may not work in jobs that are considered hazardous or that interfere with their education	
Minimum age of employment	14	
End of compulsory education	Age 6-14 (8 years)	
Relevant laws	<ul style="list-style-type: none"> • Constitution of Malawi, 1994 • Censorship and Control of Entertainment Act, 1968 • Repealed Young Pioneers Act, 1994 • National Youth Council of Malawi Act 1996, • Employment Act No. 6, 2000 • Child Care, Protection and Justice Act, 2010 • Employment (Prohibition of Hazardous Work for Children) Order, 2012 	

	<ul style="list-style-type: none"> • Education Bill, 2013
Responsible ministries	<ul style="list-style-type: none"> • Ministry of Gender, Children, Disability and Social Welfare • Ministry of Labour – Department of Labour Services • Ministry of Education, Science and Technology
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Centre for Children’s Affairs Malawi • Centre for Alternative For Victimised Women and Children • Child’s Right Advocacy and Paralegal • Centre for Advancement of Quality Education • Child’s Right Information and Documentation Centre (CRIDOC) • Civil Society Coalition for Quality Basic Education • Human Rights Consultative Committee • Malawi Network against Child Trafficking • Project Child Malawi • Total Land Care

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Companies may employ persons under 18 to the detriment of their health, development, education or family life. Particular attention should be given to rural areas.

The constitution entrusts the state with the duty to protect children from economic exploitation or any treatment, work or punishment that is hazardous, interferes with their education or is harmful to their health or physical, mental, spiritual or social development.¹⁸⁴

The Employment Act No. 6 sets the minimum age at 14 for employment in agricultural, industrial or non-industrial work and 18 for jobs considered hazardous or interfering with their education.¹⁸⁵ A number of other laws and regulations regarding the elimination of child labour and protection of children and young persons have also been passed, including the Employment (Prohibition of Hazardous Work for Children) Order 2012, Child Care, Protection and Justice Act 2010, National Youth Council of Malawi Act 1996, Repealed Young Pioneers Act 1994 and the Censorship and Control of Entertainment Act.¹⁸⁶

According to a 2014 report by the U.S. Department of State, the prohibition of child labour did not apply to work in homes, vocational technical schools or other training institutions.¹⁸⁷ The law was largely unenforced due to lack of resources, manpower and insufficient penalties to deter offenders.¹⁸⁸

The government did not make significant progress to implement its National Action Plan on Child Labour and most public education activities were carried out by tobacco companies and NGO groups, according to a 2014 report by the U.S. Department of State.¹⁸⁹

The International Labour Organization (ILO) reported in 2014 that child labour in Malawi was a widespread problem with nearly 1,5 million child labourers.¹⁹⁰ According to a 2014 report by the Danish Trade Union Council for International Development Cooperation (LO/FTF Council), child labour was at the same level as in any other Sub-Saharan African country, with an estimated 26 percent of children working.¹⁹¹ Child labour was twice as high in rural areas (28 percent) than urban areas (14 percent), with little difference between genders. The Northern region of Malawi had the highest proportion of child labourers (33 percent), though two Southern districts, Mwanza and Phalombe, also had high rates.¹⁹²

The LO/FTF Council report also noted in 2014 that the HIV/AIDS pandemic in the country was a major contributor to child labour, as children who had lost one or both of their parents were more likely to be engaged in child labour.¹⁹³ The ILO added in 2014 that change was difficult due to a tradition of child labour and a cycle of poverty.¹⁹⁴

Worst Forms of Child Labour

Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative. Particular attention should be paid to agriculture, particularly tobacco, tea and sugar plantations.

The Employment Act No. 6 stipulates that every child under the age of 18 is banned from undertaking hazardous work.¹⁹⁵ The Child Care, Protection and Justice Act from 2010 prohibits child trafficking, including labour exploitation and the forced labour of children for the income of a parent or guardian.¹⁹⁶ The government publishes a list of hazardous work for children called the 'Hazardous Work for Children Prohibition Order'.¹⁹⁷

Children were engaged in the worst forms of child labour, primarily in dangerous activities in the agriculture sector, according to the U.S. Department of State in 2013.¹⁹⁸ Children were commonly found working in tobacco and subsistence farms according to the ILO in 2014.¹⁹⁹

There were more than 78,000 children working in tobacco farms under long hours and with low wages, limiting their access to education, according to Mail & Guardian in 2011.²⁰⁰

Al Jazeera reported in 2014 that children working in tobacco farms were subject to 'hazardous manual labour, physical strain, dangerous environments, and long hours; often charged with strenuous tasks such as clearing the land, building tobacco drying sheds, and weeding and plucking raw tobacco.'²⁰¹ The report further pointed out the risk of children suffering a disease called green tobacco sickness, or nicotine poisoning, when cutting and bundling tobacco leaves, the symptoms of which included severe headaches, abdominal cramps, muscle weakness, breathing difficulties, diarrhoea and vomiting, high blood pressure and fluctuations in heart rate.²⁰² Children sometimes applied pesticides with their bare hands, which put them at risk of serious neurological problems.²⁰³

A 2012 Think Africa Press article estimated that replacing child labourers in tobacco farms with adults who were paid the minimum wage would likely increase the costs of production by US\$10 million per year in Malawi. This provided an incentive for some plantation owners to use child labour.²⁰⁴

Farms producing tea and sugar, as well as fishing, also reportedly employed child labour.²⁰⁵ Journalists for Human Rights stated in 2013 that boys caught, processed and sold fish. They reportedly spent dangerously long periods in the water, and dove to unsafe depths.²⁰⁶ Girls risked abuse in domestic services, and were subject to long working hours.²⁰⁷

A 2013 report by the U.S. Department of Labour stated that children sometimes worked alongside family members in the tenancy system, whereby farm owners loaned agricultural inputs to tenants and deducted their debt from future profits. Families who could not meet production quotas reportedly faced debt bondage.²⁰⁸

Malawi was primarily a source country for trafficking of children, according to a 2014 report by the U.S. Department of State.²⁰⁹ Children were reportedly subject to forced labour in shops, bakeries, hotels, the transit and construction sectors, domestic service, goat and cattle herding, agriculture (tobacco, tea, coffee, and sugar plantations) and small businesses.²¹⁰ NGOs cited in the report also noted the growing trend of traffickers using long-haul public transport buses to move three to four boys or young adults at a time from the southern region for forced labour in tobacco farms in the northern and central regions.²¹¹

Company operations may not be inspected for child labour.

Officials from the National Police and the Ministry of Labour are responsible for enforcing child labour laws and policies. The U.S. Department of State reported in 2014 that labour inspectors did not have law enforcement capabilities and had to enlist the police to pursue violators.²¹²

Education

Employees under 18 may be unable to access primary education; Companies may not pay adult employees wages sufficient to afford school fees for their children.

The constitution states that all persons are entitled to education and that private schools are permissible if the standards maintained by such schools are not inferior to official standards provided in state schools.²¹³ The 2013 Education Bill establishes that education is compulsory until the age of 14.²¹⁴

The U.S. Department of Labour reported in 2013 that compulsory education had not been implemented.²¹⁵ Primary schools were free by law, but families were responsible for school-related expenses such as books and uniforms. The report concluded that despite government support, resources to schools were limited and students dropped out due to a lack of school materials, qualified teachers, relevant school curricula and vocational training opportunities.²¹⁶

The LO/FTF Council reported in 2014 that most Malawians had some sort of primary education, but few progressed to higher education.²¹⁷ UNICEF reported in 2014 that net enrolment rates were high in grades one and two for both boys and girls, but only 26 percent of children completed primary school.²¹⁸

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

There was no formal mechanism for reporting child labour complaints to the Ministry of Labour's General Inspectorate, according to the U.S. Department of Labor in 2013.²¹⁹ Child labour cases were reportedly resolved through out-of-court settlements and payment of fines.²²⁰ The Equal Times reported in 2014 that penalties for breaking child labour laws were not significant enough to act as a deterrent.²²¹

Think Africa Press reported in 2012 that Malawi's government had been lenient in prosecuting people found to be employing children.²²² The U.S. Department of Labour reported that complete information on the number of child labour cases investigated, citations given and cases prosecuted in 2012 was not available.²²³ According to a Plan International advisor, between 2009 and 2010 only 49 farm owners were prosecuted in Malawi, with most receiving a US\$34 fine.²²⁴

The Human Rights Commission (HRC), Malawi's National Human Rights Institution, has a Child Rights Directorate. Complaints can be submitted by any person or group of persons on the territory of Malawi whose human rights have been violated or by legal practitioners, their representatives, third parties, NGOs, professional associations or any other representative organisations that have an interest in the matter.

The HRC can transmit the complaint to any other competent authority or make a recommendation for an action by a particular body or for the prosecution of a person found to have violated human rights.²²⁵ According to a 2014 report by the U.S. Department of State, the HRC was underfunded, leading to a backlog of cases, delayed production of reports and limited human rights monitoring.²²⁶ In 2012, the UN Human Rights Committee expressed concerns over the independence of the HRC.²²⁷ It was not clear how many child labour complaints the HRC has received.

The Department of Labour Services under the Ministry of Labour handles child labour issues, including withdrawing, rehabilitating and re-integrating children involved in, or at risk of, child labour.²²⁸

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

January 2014, Equal Times: Workers from Illovo Sugar claimed that their costs of living could not be met by the minimum wage, and that it was not enough to pay for their children's school fees.²²⁹

April 2013, Nyasa Times: A senior traditional leader trafficked and employed two youths to work as 'bila boys' (deep water divers) to stay under the water between 30 minutes and one hour holding fishing nets in Lake Chilwa area.²³⁰

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Due Diligence Initiatives

British American Tobacco: The company's Employment Principles state that it does not employ children, and commit to the fight against exploitation²³¹ and seeking to apply this commitment throughout the supply chain.²³²

Illovo Sugar (2013): Illovo's Code of Conduct and employment policies state that no child labour will take place at any of its operations.²³³ The company takes a proactive strategy to eliminate child labour among its suppliers and its efforts were reportedly commended by the Malawi government²³⁴ The risk of child labour is addressed through engagement with the ILO to provide guidance and by requiring its suppliers to adopt a zero tolerance approach to child labour.²³⁵

Philip Morris International (2013): The company has an Agricultural Labour Practices Code (ALP) that prohibits child labour in its operations. The code states that suppliers must communicate the ALP Code to farmers and help them comply with its requirements.²³⁶ Its Child and Force Labour Policy sets a minimum age of employment at 15 years or the minimum age provided by local law.²³⁷

Company Beyond Compliance Initiatives

Mkango Resources (2015): The mining company has a programme to improve educational standards at three primary schools surrounding its Songwe Hill Rear Earth project by improving their infrastructure and providing them with learning material. The company also committed to grant primary, secondary and tertiary education scholarship to the top-performing pupil in math and science subjects at each of the 3 primary schools.²³⁸

Stakeholder Recommendations

Malawi National Conference on Child Labour in Agriculture (2012): The conference, held in Lilongwe and organised by the Ministry of Labour issued the following recommendations to the tobacco industry:

- Ensure that there is a reduction and removal of hazardous child labour in the tobacco growing value chain;
- Train extension workers in identifying child labour and risks to children, as well as good agricultural practices to improve yields;
- Create incentives for growers that do not use child labour and who send their children to school;
- Cooperate with other appropriate agencies to ensure remediation for children withdrawn from child labour;
- Promote health and safety among tobacco farmers, with specific attention to Green Tobacco Sickness;
- Train farmers to protect the environment as a measure to reduce child labour, improve yields and improve food security.²³⁹

To the cotton, cattle rearing, and fishing sectors, the conference recommended:

- Commission studies on child labour prevalence in the sectors, agricultural and rural activities, to better understand the prevalence of child labour in these understudied sectors;
- Raise awareness on child labour issues in these sectors;
- Promote labour saving technologies and other Good Agricultural Practices to reduce the demand for child labour.²⁴⁰
- The conference recommended that the tea sector adopt labour saving technologies in order to reduce demand for child workers.²⁴¹

International Labour Organisation (2014): The ILO recommends that, to reduce child labour, particular attention should be paid to the agricultural, informal and domestic service sectors.²⁴²

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

- The company does not employ workers under 15 years of age for full-time work, 13 years of age for light work and 18 years of age for hazardous work (please see the question description for exceptions).
- If the company employs minors below the age of 18, the company has a list of job functions that can safely be performed by minors.
- The company is aware of local age-levels for completion of compulsory education and does not employ workers under that age for work that may interfere with such education.
- The company has a reliable procedure to check the age of young job candidates by birth certificate, other official forms of identification, or by alternative means such as physical appearance or knowledge of historic events.
- Company apprenticeship programmes do not constitute the main portion of the workforce, are limited in duration, are performed in conjunction with a school programme (or supervised by Labour Ministers or Labour Organisations), and do not interfere with the child's compulsory education.
- If the company becomes aware that it is employing young workers below minimum age, it ensures that they are enrolled in education programme, and that their dependents are compensated for the resulting loss of income.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **Business and Human Rights Resource Centre, Business & Children Portal:** The Portal is an information hub developed to give practical assistance to people from all business sectors in their work and decision-making, leading to better protection of the rights and welfare of children. The Portal has sections on: issues, positive initiatives, alleged abuses, lawsuits and guidance.
- **Children's Rights and Business Principles (2012):** Developed by UNICEF, UN Global Compact and Save the Children, these Principles are the first comprehensive set of principles to guide companies on the full range of actions that they can take in the workplace, marketplace and community to respect and support children's rights.
- **ILO Programme on the Elimination of Child Labour (est. 1992):** The Programme has the overall goal of the progressive elimination of child labour, to be achieved through strengthening the capacity of countries to address it and promoting a worldwide movement to combat child labour.

- **UN Committee on the Rights of the Child General Comment No.16 on State obligations regarding the impact of the business sector on children's rights (2013):** The Committee is the body of independent experts that monitors the implementation of the Convention on the Rights of the Child and the Optional Protocols. In April 2013, the Committee issued a general comment on business and children's rights. The objective of General Comment No.16 is to provide States parties with a framework for implementing the CRC, particularly with regard to the business sector.
- **Children's Rights in Impact Assessment – A Tool For Companies (2013):** Developed by UNICEF and the Danish Institute for Human Rights, this checklist is a practical tool intended to help companies to identify and manage their impact on children's rights. The checklist contains a set of questions and indicators covering the 10 Children's Rights and Business Principles, addressing different aspects of company policies and operations and the impact on children's rights.
- **Better Work (ILO, IFC): Guidance Sheet on Child Labour (2009)**

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Child Labour Law Enforcement Courses: The Ministry of Labour conducts child labour law enforcement courses for district labour officers, district social welfare officers, police and district magistrate court officers.²⁴³

Training on Child Justice System (2013): The government of Malawi provided training to 34 child justice magistrates, 37 probation officers, 39 prosecutors, and 34 court clerks in child justice system to strengthen the provision of the judicial service in all the Magistrate Courts in the country.²⁴⁴

Illustrations of Hazardous Work for Children: The Ministry of Labour and partners of the Child Labour Elimination Actions for Real Change (CLEAR) project developed illustrations of the official list of hazardous work for children to raise awareness at farm level.²⁴⁵

Training on the Prevention of Child Trafficking (2012): The Malawi Network Against Child Trafficking, which includes government representatives, trained 62 police officers in the prevention of child trafficking.²⁴⁶

Support for the National Action Plan (2009-present): Funded by the U.S. Department of Labor and implemented by the ILO, this programme combines a community-based child labour monitoring system, investment in infrastructure, and coordinated community action to identify child labourers and give them a chance to access education, training and eventually, employment. The system also provides for the monitoring of the child labour situation in target areas such as in Malawi's tobacco farms and other rural settings. The programme since its establishment, according to the ILO, has made a positive difference in changing people's attitudes.²⁴⁷

NGO Initiatives

Eliminate Child Labour in Tobacco Foundation: The foundation is a partnership between trade unions, tobacco growers and tobacco companies.²⁴⁸ The project aims to improve the life of children in tobacco-growing communities, by: identifying and registering children engaged in child labour and sustainably withdrawing them from it; providing access to education; conducting awareness-raising campaigns to

identify and eliminate child labour in communities; strengthening communities to fight against child labour; and alleviating poverty.²⁴⁹

Development Priorities

Government of Malawi: The government prioritises promoting the role of the private sector and private financing in the education system for the period 2011-2016 to improve access to quality and relevant education.²⁵⁰

Forced Labour

Debt bondage, human trafficking or other coercion that makes workers unable to freely leave employment

Operating Environment	
U.S. Department of Labour Trafficking in Persons: Tier Placement	Tier 2 (2014)
Relevant laws	<ul style="list-style-type: none">• Employment Act, 2000• Child Care, Protection, and Justice Act
Responsible agencies	<ul style="list-style-type: none">• Ministry of Labour

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Companies may deny workers the ability to freely enter and leave employment. Particular attention should be paid to the agriculture sector, particularly tobacco farms.

Malawi's Employment Act, adopted in 2000, prohibits forced labour and imposes a fine of MWK 10,000 (US\$22) and imprisonment for two years.²⁵¹ The U.S. Department of State reported in 2014 that the law concerning forced labour was not effectively enforced.²⁵²

The International Labour Organisation reported in 2013 that clear cases of agricultural forced labour were documented in tobacco production.²⁵³ A common model of forced labour was unwritten agreements between tenant families and landowners that granted tenants a portion of the profits from tobacco harvest in exchange for their labour.²⁵⁴ Tenant families reportedly paid rent charges and other expenses that exceeded their income, according to Verite in 2015.²⁵⁵

The International Labour Rights Forum reported in 2012 that tobacco companies in Malawi were taking advantage of credit opportunities by selling agricultural chemicals and other inputs at above-market rates on loan. Through these loan arrangements, farmers were trapped into a cycle of debt.²⁵⁶

The rural poor were particularly vulnerable to forced labour, according to a 2014 report by the U.S. Department of State.²⁵⁷

Trafficking

Companies may employ workers who are subject to exploitative labour conditions through internal or external trafficking. Particular attention should be paid to the agriculture sector and tea, tobacco and sugar plantations, as well as migrants from Zambia, Mozambique and Tanzania.

The Anti-Human Trafficking Bill was adopted in 2015, which seeks to protect and promote rights of vulnerable people, particularly children and girls, from trafficking. The law includes penalties of up to 20 years' imprisonment.²⁵⁸

Malawi was primarily a source country for trafficking of men and women and, to a lesser extent, a destination and transit country, according to a 2014 report by the U.S. Department of State.²⁵⁹ Trafficked persons reportedly came from Zambia, Mozambique and Tanzania.²⁶⁰

According to a 2014 report by the U.S. Department of State, there were reports of adults being trafficked into Malawi and forced to work in goat and cattle herding and in the agriculture sector, including on tea, tobacco and sugar plantations.²⁶¹

The government reportedly relied on NGOs and international organisations to fund and implement most of Malawi's anti-trafficking programmes.²⁶²

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

Forced labour and child trafficking law's enforcement was weak, according to a 2014 report by the U.S. Department of State.²⁶³ Limited anti-trafficking data and unclear mandates contributed to shortcomings in trafficking investigation, prosecution and convictions.²⁶⁴

Prosecutions of trafficking cases were rare and strong punishments were almost non-existent, according to Nyasa Times in 2015.²⁶⁵ The National Police reported that the government convicted 15 traffickers in seven districts during 2013, and to 13 traffickers in eight districts in 2012.²⁶⁶

According to a 2014 report by the U.S. Department of State, trafficking victims participated in investigations and prosecutions and could seek reparations, though compensation sums were equivalent to minimum rural wages in cases of forced labour.²⁶⁷

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Due Diligence Initiatives

Philip Morris International (2013): The company has an Agricultural Labour Practices Code (ALP) that prohibits forced labour. The code states that suppliers must communicate the ALP to farmers and help them comply with its requirements.²⁶⁸

Vale: The company, which is engaged with the construction of a railroad in Malawi as part of the Nacala Corridor Project, adopted a Human Rights Policy and the UN Guiding Principles on Human Rights and Business to respect and promote human rights in all its activities, and has committed to avoid

commercial relationships with suppliers that demonstrate any characteristics of slavery or forced labour.²⁶⁹

Illovo Sugar (2013): Illovo's Codes of Conduct and employment policies are explicit in ensuring that no forced labour takes place at any of its operations.²⁷⁰ The company states that it does not tolerate any form of forced labour and it takes measures to address the risk of forced labour in its supply chain by engaging with ILO for guidance, and by contractually requiring suppliers to adopt a zero tolerance approach against forced labour.²⁷¹ These imperatives are monitored and embed with support from Fair Trade audits.²⁷²

Company Beyond Compliance Initiatives

Illovo Sugar (2013): The company, in collaboration with grower associations and suppliers, implements an educational programme and awareness raising activities to promote a culture of respect for human rights and a commitment to combat forced labour.²⁷³

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

- Workers can give notice and leave employment within a reasonable length of time. This is clearly communicated to workers prior to starting employment.
- The company (or its recruitment agencies) ensures that it does not withhold wages or bonuses and that it pays them in a timely and regular manner.
- The company ensures it does not make deductions from wages for disciplinary measures or other deductions not authorised by national law.
- Within normal working hours workers are able to earn a living wage sufficient to meet the basic needs of themselves and their closest dependents.
- Overtime work is paid, voluntary and not compelled through threat of pay deductions, termination or other sanctions.
- The company (or its recruitment agencies) ensures that it does not retain identity cards, passports, travel documents or other personal items without which workers cannot leave employment. If letters of release or other documents are needed for the worker to leave employment, such letters are issued without delay.
- All workers are allowed to leave company premises during breaks and at the end of their shifts, and workers in company housing may freely enter and exit their accommodation at any time.
- The company (or its recruiting agencies) ensures that it does not require workers to pay recruitment fees or lodge money deposits.

- Loans or salary advancements to workers are based on fair terms that are clearly explained to the worker, are not granted to cover basic living expenses, are limited in size, and do not require the worker to remain with the company until repayment is completed.
- If the company uses prison labour it ensures that all prison workers have been convicted by a court of law, and that the work is voluntary and supervised by a public authority.
- The company ensures that it does not use labour from agencies or firms involved in human trafficking or other forms of bonded labour.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Training of Judicial Officers and Judges (2014): The government provided training to 120 judicial officers and 35 judges and magistrates on trafficking issues.²⁷⁴

Training of Immigration officers: Malawi's Immigration Department trained 317 new immigration officers in 2013. The curriculum was revised during 2012 to include international trafficking frameworks, identification of traffickers, and assistance to victims.²⁷⁵

Occupational Health & Safety

Unsafe or unhealthy working conditions that expose workers to the risk of accidents or occupational illnesses

Operating Environment	
Relevant laws	<ul style="list-style-type: none">• Occupational Safety, Health and Welfare Act, 1997• Workers Compensation Act, 2000
Responsible agencies	<ul style="list-style-type: none">• Ministry of Labour – Directorate of Occupational Safety and Health
Local NGOs addressing this issue	<ul style="list-style-type: none">• Employers Consultative Association of Malawi

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Companies may not adequately prevent accidents and long-term health effects in the workplace. Particular attention should be paid to tobacco plantations, forestry construction, manufacturing and the mining sector.

The constitution guarantees the right to safe labour practices.²⁷⁶ The Occupational Safety, Health and Welfare Act, adopted in 1997, provides regulation of employment conditions in workplaces with extensive occupational health and safety standards to be applied to all workers.²⁷⁷ Employers are required to notify the Ministry of Labour of all occupational accidents and fatalities that occur in the workplace.²⁷⁸ The law grants workers the right to remove themselves from dangerous work situations jeopardizing their continued employment. According to a 2014 report by the U.S. Department of State, this right was unlikely to be invoked due to the high level of unemployment and the low level of education among workers.²⁷⁹

The Worker's Compensation Act provides work injury benefits. The compensation or insurance cost rests on the employer, with no pooling of risk across the labour market. The Danish Trade Union Council for International Development Cooperation reported in 2014 that the act only applied to formal workers and not to casual workers, self-employed persons or family workers, which make up the vast majority of the labour force.²⁸⁰

The International Labour Organization (ILO) noted in 2012 that the Ministry of Labour did not adequately enforce occupational safety and health legislation, in part due to a lack of budgetary allocation.²⁸¹

Between 24 and 46 workplace accidents were reported every year in Malawi, but this figure only represented a small number of occupational accidents, according to the ILO in 2012.²⁸² The Ministry of Labour further stated that most workplaces did not report accidents or injuries, as stated in a joint publication by the ILO in 2012.²⁸³ The latest official data, from 2012, reported that most accidents occurred in agriculture (particularly tea estates), forestry, construction and manufacturing.²⁸⁴

The mining sector, particularly small-scale mining, was characterised by poor working conditions and non-existent health and safety measures, according to the ILO in 2012.²⁸⁵

The ILO also reported that awareness of occupational safety and health issues was low among both the general public and policy makers, and workers rarely used personal protective clothing or equipment, even when they were provided by employers.²⁸⁶ This was particularly acute in industrial jobs, but also in tobacco fields, where the handling of the leaves was reportedly done without protective clothing, causing dissolved nicotine to absorb through the skin, according to a 2014 report by the U.S. Department of State.²⁸⁷

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

The Industrial Relations Court has jurisdiction over labour disputes and other issues relating to employment, including cases regarding compensation over workplace accidents,²⁸⁸ but was reportedly unable to enforce the laws adequately due to lack of funding and a heavy case backlog, according to a 2014 report by the U.S. Department of State.²⁸⁹

At the administrative level, the Department of Labour Services under the Ministry of Labour has the authority to play a conciliatory, mediatory role between employers and workers on labour matters. It conducts investigations on allegations of violations of worker's rights.²⁹⁰

According to official data, during 2012 the Ministry of Labour received 6,726 cases related to compensation over workplace accidents, 22 of them fatal, mostly occurring in the private sector. There were 19,480 outstanding cases as of 2012.²⁹¹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **January 2015, Nyasa Times:** A former worker at Kayelekera Uranium Mine in Karonga experienced serious vision problems that consequently led to his dismissal. His medical report linked his eye problem to radiation exposure.²⁹²
- **July 2014, The Oracle Times:** A Chinese construction company reportedly did not provide workers with protective clothing.²⁹³
- **September 2013, Nyasa Times:** One process operator working at Paladin Energy's Kayelekera Uranium Mine in northern Malawi was fired while being hospitalized at Mwaiwathu Private

Hospital. Though the man allegedly suffered from a form of cancer that experts had linked to exposure to uranium radiation, the company did not pay his hospital bills. The man subsequently died. Paladin Energy maintained that radiation levels were safe and did not cause the death.²⁹⁴

- **July 2013, Stockhouse:** A fatality occurred at Paladin Energy's Kayelekera Mine in northern Malawi when an employee working in the engineering workshop was struck in the chest by a light vehicle wheel during working hours. The findings of an investigation into the death were pending.²⁹⁵

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Due Diligence Initiatives

Surestream Petroleum: The company, with operations in Malawi, adopted a Health, Safety and Environment Policy. The policy aims to: Ensure the safety of all employees and contractors; avoid any third party being harmed; and monitor employees for signs of illness. Senior staff periodically visited field offices to promote health, safety and environmental training, and the company provides training on Occupational Health and Safety Management to its supervisory personnel. Employees and contractors are required to report all incidents at worksites and actions are implemented to prevent recurrences of similar incidents.²⁹⁶

Eastern Produce Tea Estate: Malawi's largest tea estate implements a comprehensive Occupational Health and Safety programme that includes a healthy and safety policy; workplace risk assessments; joint health and safety committees; workplace inspections; first aid implementation; fire safety implementation; annual third party health and safety audits; and health and safety training.²⁹⁷

Company Beyond Compliance Initiatives

Illovo Sugar Malawi Limited: The company implements measures such as community safety briefings, industrial theatre and the placement of visible safety signals to raise awareness on occupational health and safety.²⁹⁸

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company ensure that its workers are provided safe, suitable and sanitary work facilities?

- Responsibilities for health and safety tasks are clearly defined.
- The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.
- Workers and managers are trained to respond to workplace emergencies; first aid kits and fire extinguishers are readily available; and escape exits are clearly marked and free from obstruction.
- The workplace is maintained to ensure clean and comfortable conditions including a suitable temperature, ventilation and lighting; suitable washing and sanitation areas appropriate for both genders.
- Residential or overnight facilities are safe and sanitary and meet the basic needs of workers including with regard to safety, space, temperature, lighting, ventilation, food, water, sanitary facilities, privacy, and affordability.
- The company provides safe drinking water for workers and facilities for clean and sanitary food storage and eating.
- Where relevant the company has put in place special health and safety precautions for pregnant women, employees with disabilities, night workers, young workers and other vulnerable groups.

Does the company ensure that workers are provided with the protective equipment and training necessary to perform their tasks safely?

- The company has a procedure to ensure that all workers are provided, free of charge or deposits, with the protective equipment necessary to safely perform their job functions.
- The company is committed to ensuring that workers use the protective equipment provided and understand why it is necessary to use the equipment.
- The company ensures that all workers have the necessary training to safely perform their job functions and keeps workers fully informed, in a language and form understandable to them, of the health and safety procedures.
- An accurate record is kept of who has been trained and for what tasks.
- On a regular basis and when assigned to new tasks, workers receive training in the safe use of equipment and processes.
- A company function or member of staff is responsible for keeping informed of scientific and technological developments regarding health and safety risks and protective equipment.

Does the company actively involve workers in health and safety work?

- The company consults employees on health and safety issues either directly or through a freely elected safety representative(s) for relevant groups of employees.
- A health and safety committee has been established including employee safety representatives and representatives from management.
- Health and safety accidents are reported and investigated including involving the relevant worker(s), and actions are taken to prevent recurrences.
- Health and safety near-misses (accidents not resulting in injury) are reported and investigated to help improve safety.
- Health and safety accidents are monitored including hours lost as a result of injury or illness and e.g. compared to total hours worked (lost time injury frequency).

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **IFC Performance Standard 2: Labour and Working Conditions (2012):** FC PS2 is guided by the international labour standards as outlined by the ILO and covers health and safety.
- **Portal for Responsible Supply Chain Management:** The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- **Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009):** The Ethical Trading Initiative is an alliance of business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

National Programme on Occupational Safety and Health (2011-2016): The government adopted the programme to create a systematic and coordinated approach for strengthening a national system on occupational safety and health. Areas of intervention include capacity building and training of inspectors; formulation of specific regulations for high risk sectors including informal economy; establishing a national occupational hygiene laboratory; mainstreaming of HIV/AIDS and occupational TB prevention at the workplace; OSH advocacy and awareness campaign.²⁹⁹

Awareness Campaigns on Occupational Safety and Health: The Directorate of Occupational Safety and Health under the Ministry of Labour (MoL) conducts the campaigns on OSH information to both employees and employers in workplaces to ensure that they are rendered safe and without risk to the health of workers, the general public and the environment.³⁰⁰

Abstract of the Occupational Safety, Health and Welfare Act: The MoL produced the document that is posted in most registered workplaces with the aim of helping ensure that workers and employers are aware of the legislation's requirements, including the notification of cases to the MoL's Directorate of Occupational Safety and Health.³⁰¹

Development Priorities

The Malawi National Occupation Safety and Health Programme (2011-2016): The programme prioritises, among other things, the strengthening of occupational safety and health systems at national and enterprise levels as well as advocacy and awareness raising campaigns on occupational safety and health.³⁰²

Malawi Growth and Development Strategy II (2011-2016): The government prioritises adherence to safety and healthy standards to foster productivity and decent employment.³⁰³

Trade Unions

Restrictions on the right of workers to collectively represent their interests

Operating Environment	
<p>Largest trade unions and union confederations</p> <p><i>Names, sectors and number of employees represented</i></p>	<ul style="list-style-type: none"> Malawi Congress of Trade Unions (MCTU): 200,000 members (includes most economic sectors).³⁰⁴ Tobacco and Allied Workers Union of Malawi (TOAWUM): 23,513 members. Malawi Union for the Informal Sector (MUFIS): 2,695 members.³⁰⁵ Quarries Mines and Informal Workers Union (QMIWU): 1.118 members.³⁰⁶ Commercial Industrial and Allied Workers Union (CIAWU)
Relevant laws	<ul style="list-style-type: none"> Constitution of Malawi, 1994 Labour Relations Act, 1996
Responsible agencies	<ul style="list-style-type: none"> Ministry of Labour
Local NGOs addressing this issue	<ul style="list-style-type: none"> Employers Consultative Association of Malawi

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

KPMG stated in 2013 that industrial relations in Malawi were still evolving as trade union rights had only existed since the transition to a multiparty democracy in 1996. Employers, labour unions, and the government lacked sufficient knowledge of their legitimate roles in labour relations and disputes.³⁰⁷

The Ministry of Labour coordinates the social dialogue process between employers and workers.³⁰⁸

Barriers to Unionisation

Workers may be prevented from forming or joining independent worker's associations. Particular attention should be given to the informal sector and tobacco workers.

The constitution guarantees that everyone has the right to form and join trade unions.³⁰⁹ The Labour Relations Act guarantees that every person has the right to establish and join organisations of his or her

own choosing.³¹⁰ Unions must register within the Registrar of Trade Unions and Employers' Organisations in the Ministry of Labour.³¹¹ While the International Trade Union Confederation (ITUC) in 2013 noted that authorities had the power to refuse official registration on arbitrary, unjustified or ambiguous grounds, this did reportedly not happen in practice, and registration within the Ministry of Labour was largely a formality.³¹² Unions have the right to form or join federations, and they have the right to affiliate with and participate in the affairs of international workers' organisations.³¹³

KPMG reported in 2013 that 29 unions were registered, but that union membership was low (19 percent, 2012), due to the small size of the formal sector (11 percent, 2013 estimate); a lack of awareness of workers' rights and benefits; and resistance on the part of many employees to join unions for fear of reprisals.³¹⁴ Illiteracy among workers, especially in the tobacco industry, was described by ITUC as a contributing factor to the low awareness.³¹⁵

Informal workers in Malawi are allowed to form and join unions. The number of informal workers members to such unions however represented less than 1 percent of workers in the informal sector.³¹⁶

Farm owners and tobacco companies threatened tobacco workers with dismissal if they join a union. These threats reportedly weakened the power and voice of tobacco workers, and kept them from demanding better working conditions, according to The International Labour Rights Forum in 2012.³¹⁷

Collective Bargaining

Workers may be prevented from engaging in collective bargaining. Particular attention should be given to legal barriers, the informal sector and tea and tobacco plantations.

Workers in the formal sector of the economy had the right to collective bargaining. A minimum of 20 percent of employees (excluding senior managerial staff) who are members to a union is required by law to exercise collective bargaining at the enterprise (factory) level. The minimum requirement is 15 percent for collective bargaining at the sector (industry) level.³¹⁸ The ITUC considered these requirements to be excessive.³¹⁹

The law allows for the creation of Industrial Councils that can act on behalf of trade unionists that constitute 15 percent or more of the workforce in case a collective bargaining request has been denied by the employer. Industrial councils handle wage negotiation and conditions of employment, dispute resolution, and industry-specific labour policy development.³²⁰

The International Labour Rights Forum noted in 2012 that tobacco companies were reportedly unwilling to work with unions on bargaining agreements.³²¹

Furthermore, there was reportedly no strong trade union in the tea sector, limiting tea workers' collective bargaining power, according to Equal Times in 2013. Two trade unions existed in the sector but they competed with each other to recruit members.³²²

The U.S. Department of State reported in 2014 that informal sector employees were unable to obtain the same standard of protection as formal sector workers due in part to a Ministry of Labour decision that the Malawi Union for the Informal Sector (MUFIS) did not have sufficient standing to bargain collectively.³²³

Strikes

Workers may be prevented from, or improperly sanctioned for, participating in strike actions. Particular attention should be given to legal barriers to striking.

Only registered unions are allowed to strike.³²⁴ KPMG reported in 2012 that the Labour Relations Act allowed strikes and lockouts for registered workers and employers after dispute settlement procedures in collective agreements and conciliation had failed.³²⁵ According to 2012 reports from the Danish Trade

Union Council for International Development Cooperation and ITUC, the procedures prior to striking were long and bureaucratic.³²⁶

ITUC further reported that there was no specific protection for workers who were involved in lawful strike action. It was reported that this gap in protection occurred particularly in the area of protecting workers against dismissal. Furthermore, ITUC reported that the law did not directly prohibit retaliation against strikers.³²⁷

There were incidents of labour unrest, which were normally non-violent, according to KMPG in 2012.³²⁸

Anti-Union Discrimination

Workers who engage in trade union activities may be subject to harassment or retaliation. Particular attention should be given to electronic media, tobacco, sugar, freight and the transport sector.

The law prohibits anti-union discrimination and provides remedies in cases of dismissal on ground of union activity, but it does not specifically prohibit retaliation against strikers or actions against unions that are not registered, according to a 2014 report by the U.S. Department of State.³²⁹

ITUC stated in its last annual report for the country from 2012 that union leaders had been subject to harassment, dismissal and arrest.³³⁰ Workers in electronic media, tobacco, sugar, freight and transport workers, and union members in the electricity sector had reported anti-union discrimination during the reporting year.³³¹

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

The Industrial Relations Court has jurisdiction over labour disputes and other issues related to employment.³³² Decisions could be appealed to the High Court.³³³

At the administrative level, the Department of Labour Services under the Ministry of Labour has the authority to play a conciliatory, mediatory role between employers and workers on labour matters. It conducts investigations of allegations of violations of worker's rights.³³⁴

The U.S. Department of State noted in 2014 that some labour cases were delayed due to lack of resources and capacity. The majority of workers were in the informal sectors, thus were excluded from the benefits granted by law.³³⁵

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

January 2014, Equal Times: Illovo Sugar reportedly had a policy that required employees to ask for permission to arrange trade union meetings. In 2011 key strike leaders protesting for better wages were allegedly fired for holding meetings without permission from the company.³³⁶

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company recognise the rights of its workers to freedom of association and to bargain collectively?

The company has a commitment to recognise the rights of its workers to freedom of association and collective bargaining, including the right to freely form and/or join independent trade unions, and this commitment is clearly communicated to all employees.

- The company recognises workers' organisations for collective bargaining purposes and has procedures in place to ensure regular collective bargaining with authorised worker representatives concerning all workplace related issues.
- The company allows worker representatives access to collective bargaining agreements, company premises, employees and other relevant documentation needed to fulfil their duties.
- The company prohibits discrimination or adverse actions against worker representatives or employees for participating or refraining to participate in lawful trade union activities.
- The company has agreed with workers' representatives about the requirements of a fair hearing to be followed in relation to all disciplinary cases and employee grievances.
- The company has a committee, with participation of employee-elected representatives, which is responsible for hearing, processing, and settling disciplinary cases and employee grievances.
- If independent trade unions are either discouraged or restricted, does the company enable workers to gather independently to discuss work-related problems?
- The company allows employees to engage in regular employee-only meetings within normal working hours, where employees can discuss concerns regarding working conditions.
- Where allowed by local legislation, and if independent trade unions are not present, the company informs employees of their right to form independent collective representation at the workplace.
- Where allowed by local legislation, the company informs workers of their right to engage in regular collective bargaining concerning all workplace issues.
- Company management meets regularly with worker representatives to discuss work-related problems and any concerns/complaints employees may wish to raise.

Working Conditions

Employment status, wages, working hours and social security

Operating Environment	
Minimum wage	MWK 551 (US\$1.40) per day
Relevant laws	<ul style="list-style-type: none"> • Constitution of Malawi, 1994 • Labour Relations Act, 1996 • Pension Act, 2011
Responsible agencies	<ul style="list-style-type: none"> • Ministry of Labour – Department of Labour Services
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Centre for Social Concern • Employers Consultative Association of Malawi

Working Conditions: National Law		
	Malawi	International Standard
Standard workweek	48	48
Overtime pay rate	1.50x	1.25x
Holidays with pay, per year	18 working days if working six days a week and 15 working days if working five days a week	3 weeks
Maximum daily working hours	12	10
Maximum weekly working hours	48	48
Uninterrupted weekly rest period	24 hours per 7 days	24 hours per 7 days

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Wages

Workers may not be able to earn a living wage sufficient to meet the basic needs for themselves and their dependents. Particular attention should be given to rural areas, sectors employing women and the tea and tobacco sector.

The constitution guarantees that every person has the right to fair labour practices, including fair wages.³³⁷

Urban and rural minimum wages are determined by the Ministry of Labour taking into account the recommendations of a tripartite wage advisory board made up of representatives of labour, government and the private sector.³³⁸

The statutory minimum wage was set in January 2014 at MKW 551 (US\$1.40) per day, an increase of 74 percent from 2013. The minimum statutory wage applies, without exception, to all sectors of the economy and throughout the country. It amounts to a monthly income of MKW 16,530 (US\$41).³³⁹

The Malawi Labour Force Survey reported in 2013 that the median income was MKW 13,600 (US\$31).³⁴⁰ Sixty-one percent of workers had earnings less than two-thirds of the median. On average, males earned more than females and people in urban areas earned more than their counterparts in rural areas.³⁴¹

The Ministry of Labour lacked the resources to enforce the minimum wage effectively, according to the Danish Trade Union Council for International Development Cooperation (LO/FTF Council) in 2012.³⁴²

IRIN News reported in 2013 that Malawi, following calls by the International Monetary Foundation, had devalued its national currency by 49 percent, which lowered real wages.³⁴³

Fairtrade International estimated in 2014 that the living wage in Malawi was MKW 32,392 (US\$75) per month when common in-kind benefits were provided and MKW 35,222 (US\$82) per month when there were no in-kind benefits.³⁴⁴

The LO/FTF Council noted that the minimum wage was irrelevant for most citizens, who earned their livelihood outside the formal labour sector, which was estimated to only make up 11 percent of the total workforce.³⁴⁵ Workers often supplemented their incomes through farming activities, according to the U.S. State Department in 2014.³⁴⁶

Fair Trade noted in 2014 that only 6 percent of workers in rural Malawi received a salary. The report stated that there were approximately 50,000 persons employed at tea estates where wages were reportedly higher than the average rural wage taking into consideration that they received bonuses, overtime and in-kind benefits. Still, according to Fair Trade, salaries were considered too low to support a decent lifestyle.³⁴⁷

Working Hours

Workers may be subject to excessive working hours and may be denied compensation for overtime work.

The maximum legal workweek is 48 hours, with a mandatory 24-hour rest period per week. The law requires payment for overtime work and prohibits compulsory overtime, in line with international standards.³⁴⁸ Annual leave varies in both the public and the private sector, but is at a minimum 15 days per year.³⁴⁹

The U.S. Department of State reported in 2014 that workweek standards were not effectively enforced, and employers frequently violated statutory time restrictions.³⁵⁰

Social Security

Workers may not have access to social security benefits.

In 2011, a mandatory public pension law was introduced and allowed private sector workers with earnings greater than the minimum wage to contribute.³⁵¹ Workers contributed 5 percent of their salary while employers were required to contribute with 10 percent of workers' salaries into the fund if the worker had worked for more than 12 months for the employer.³⁵²

The Bertelsmann Foundation stated in 2014 that the pension has faced challenges, particularly misunderstandings between workers and employers about how pension schemes are run and paid out.³⁵³ The LO/FTF Council reported in 2014 that there was little data and information on social protection in Malawi.³⁵⁴

Employment Status

Workers may lack written employment contracts or may otherwise lack the protection of labour laws. Particular attention should be given to informal and self-employed workers.

The LO/FTF Council reported in 2014 that the informal economy accounted for approximately 4 million jobs (89 percent of the total), with the formal economy accounting for just 500,000.³⁵⁵

The LO/FTF Council further reported that there were few social protection options for informal or self-employed workers. The report cited the Medical Aid Society as the only major health insurance provider in Malawi, of which 95 percent of members were formal workers. Non-contributory social safety nets comprised of almost only food support programmes for the most vulnerable, including the elderly, the chronically sick, orphans and other vulnerable children, persons with disabilities, and destitute families. These programmes covered over 20 percent of households, particularly in the Southern Region. Informal workers had access to few viable schemes, apart from governmental loan schemes such as the Youth Development Fund, Malawi Rural Development Fund and Income Generating Programme.³⁵⁶

The International Labour Organization reported in 2011 that young people and women made up a large part of the informal economy, which was further characterized by a number of decent work deficits, including lack of fundamental principles and rights at work; lack of decent work opportunities and inadequate social protection; precarious incomes; poor and dangerous working conditions; and lack of voice and worker representation.³⁵⁷

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

The Industrial Relations Court has jurisdiction over labour disputes and other issues relating to employment, including cases regarding working conditions,³⁵⁸ but was reportedly unable to enforce the laws adequately due to lack of funding and a heavy case backlog, according to a 2014 report by the U.S. Department of State.³⁵⁹

At the administrative level, the Ministry of Labour, through its Department of Labour Services, has the authority to play a conciliatory, mediatory role between employers and workers on labour matters. It conducts investigations of allegations of violation of worker's rights.³⁶⁰

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **February 2014, Face of Malawi:** Malawian workers in the Mwanza district in southern Malawi arranged a sit-in to protest against Mota Engil's import of manpower from Portugal and South Africa and the subsequent dismissal of Malawian workers. Mota Engil employees planned to expand the strike.³⁶¹
- **January 2014, Equal Times:** Subcontracted workers at Illovo Sugar Malawi were allegedly denied maternity leave, sick leave and overtime pay. They refrained from demanding better conditions due to fears of losing their jobs.³⁶²
- **January 2014, Nyasa Times:** A court found the Malawi Revenue Authority (MRA) guilty of the unlawful dismissal of 210 employees in June 2009 and July 2010. The court faulted the MRA for promising members of staff that restructuring processes would not lead to dismissals, for not following proper procedures in regard to selecting who was to be retrenched and for not explaining the reasons for the dismissals.³⁶³
- **July 2013, International Trade union Confederation:** The Minister of Agriculture, who owned the Mimosa Court Hotel, dismissed 21 workers for demanding a wage increase. Workers had been complaining about not being paid for overtime with many workers working 11-hour days.³⁶⁴
- **June 2013, Nyasa Times:** Malawian workers at Mota-Engil in Neno went on strike to protest against the unfair salary differences between Malawians and foreign workers from Thailand, Portugal and Brazil. The Malawian workers alleged that the foreign workers enjoyed much better salaries and benefits, while they had to work over the weekends with no overtime allowance. They also feared being dismissed without a hearing.³⁶⁵
- **May 2013, The Nyasa Times:** Shop workers in Blantyre and Zomba went on strike due to concerns over low salaries and the high cost of living. They were demanding a salary increase of around 350 percent.³⁶⁶
- **April 2013, Malawi Voice:** Carlsberg's employees in all three regions of Malawi went on strike protesting against deductions on their annual bonus, which amounted to 150 percent of their salaries instead of the promised 250 percent. The company was said to make the decision in order to recover stolen goods at the company but it was alleged that these stolen goods were already insured and paid for by the company's insurance.³⁶⁷

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Due Diligence Initiatives

Vale: The company, which is engaged with the construction of a railroad in Malawi as part of the Nacala Corridor Project, adopted a Human Rights Policy and the UN Guiding Principles on Human Rights and Business. The company is committed to respect and promote human rights in all its activities and of its suppliers, particularly in providing dignified working conditions in terms of number of hours worked, pay and benefits and health and safety conditions.³⁶⁸

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Working hours

Does the company ensure that the workweek is limited to 48 hours; that overtime is infrequent and limited; and that workers are given reasonable breaks and rest periods?

- Normal company working hours are limited to 48 per week by both company policy and practice, or fewer if provided by national law, collective agreement or industry standards.
- Overtime is infrequent, remunerated at premium rate, and does not exceed 12 hours in any one week, or 36 hours per month.
- The company has a system to plan, record and monitor hours worked by each employee, and regularly evaluates whether the number of workers is sufficient to meet production targets without resorting to overtime.
- Where overtime per worker systematically exceeds 12 hours per week, the company increases its workforce to correspond to production targets, or puts in place measures to increase worker productivity and reduce overtime.
- Workers are allowed at least 24 consecutive hours of rest (or more if provided by national law or industry standards) in every seven day period.
- The company ensures that workers have no less than a 30-minute break for every 4 hours of work (or more if provided by national law or industry standards) and that workers are allowed to use toilet facilities whenever necessary and not just during designated breaks.

Wages

Does the company provide a living wage that enables workers to meet the basic needs of themselves and their dependents?

- It is company policy to provide workers with a living wage sufficient to meet basic food, clothing and housing needs and provide some discretionary income for themselves and their dependents.
- The company is aware of whether the legal minimum wage in the country of operation meets the requirement for a living wage.
- If no national minimum wage is established, or if national minimum wage standards are insufficient to meet the basic needs of workers and their dependents, the company calculates a living wage based on the cost of living in its area of operation.
- Part-time workers receive wages and benefits that are proportionate to those of full-time workers, and receive overtime compensation at a minimum of 1.25 times their hourly salary.
- The company pays wages at regular intervals and does not take deductions from wages for disciplinary measures or other deductions not authorised by national law.

- Bonus and piece-rate payment systems are monitored to ensure that the total salary paid meets living wage requirements without resort to overtime.

Leave

Does the company ensure that workers are paid holiday leave, sick leave, and parental leave in accordance with international minimum standards?

- Workers are granted at least three weeks of paid holiday leave per year or more if required by national law or collective agreements. Part-time and short-term workers are provided with paid holiday leave proportionate to the number of hours worked, at a rate equal to that of permanent full time employees.
- Workers are entitled to paid sick leave in accordance with the applicable national law. If sick leave is not provided for in national law, the company consults with union or worker representatives to establish alternative means of protection in case of illness or injury.
- The company ensures that sick leave is not deducted from workers' vacation time.
- Female workers are entitled to no less than fourteen weeks of paid maternity leave per child.
- The company grants compassionate or parental leave to workers who have recently adopted a child or children, or have taken on the responsibility to care for foster children or other dependent children.

Employment status

Does the company ensure that all workers have an official employment status?

- The company ensures that all employees receive employment contracts prior to starting work for the company, and that contracts are understood by each employee.
- Contracts detail each employee's rights and obligations of employment, including clear job description, bonus and salary systems, and reasonable notice periods.
- Reference to company handbooks or other relevant documents on employment terms are integrated into the contract.
- The company ensures that contractors provide workers operating within company premises with an official employment status in line with company standards.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009):** The Ethical Trading Initiative is an alliance of different business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.

- **Institute for Human Rights and Business and Global Business Initiative on Human Rights, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012):** The Report examines how the UN Guiding Principles can contribute and guide the complex network of business relationships that now exist in a global economy. It explores how companies of all sizes are now beginning to implement human rights considerations and the UN Guiding Principles into both traditional and contemporary business relationships.
- **Portal for Responsible Supply Chain Management (est. 2008):** The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- **IFC Performance Standard 2: Labour and Working Conditions (2012):** IFC PS2 is guided by the international labour standards as outlined by the ILO and covers a range of aspects, including: terms and conditions of employment, non-discrimination, health and safety, and forced labour. The Standard addresses employees, contracted workers and supply chain workers.
- **International Labour Organization:** The International Labour Organization (ILO) is the UN agency responsible for preparing and overseeing international labour standards. The mission and objectives of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.
- **OECD Guidelines for Multinational Enterprises (2011):** The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Chapter 5 is on employment and industrial relations, aligning with the international labour standards of the ILO.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Technical, Entrepreneurial and Vocational Education and Training Programme (TEVET) (2014): Under TEVET, the government implements the Informal Sector Skills Development Programme which aims to enhance the technical and entrepreneurial skills of people living and working in the informal sector. The targeted groups are the unemployed and out of school youths; vulnerable master craftsmen; artisans; micro-entrepreneurs; traditional apprentices; and marginalised and disadvantaged groups such as women and orphans.³⁶⁹

Environment

Company impacts on the environment that affect the health or livelihoods of local communities

Operating Environment	
Percentage of population with access to improved water sources	85 (2012)
Environmental Performance Index rank	128 out of 178 countries (2014)
Food Security Index rank	94 out of 109 countries (2014)
Relevant laws	<ul style="list-style-type: none"> • Constitution of Malawi, 1994 • Water Resources Act, 1969 • The Environmental Management Act, 1996 • Forestry Act, 1997 • Malawi Energy Policy • National Environmental Policy • National Water Policy
Responsible agencies	<ul style="list-style-type: none"> • Ministry of Natural Resources, Energy and Environment • Ministry of Irrigation and Water Development • National Water Development Programme • National Sanitation and Hygiene Coordination Unit • Ministry of Agriculture and Food Security
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Action for Environmental Sustainability • African Institute of Corporate Citizenship Biodiversity Conservation Initiative • Centre for Environmental Policy and Advocacy • Coordination Unit for the Rehabilitation of the Environment (CURE)

- Greenline Movement
- Water and Environmental Sanitation Network
- Wildlife and Environmental Society of Malawi

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The constitution of Malawi recognizes that responsible environmental management can make an important contribution toward achieving sustainable development, improved standards of living and conservation of natural resources. The constitution states that the environment of Malawi should be managed in order to prevent the degradation of the environment; provide a healthy living and working environment for the people; accord full recognition of the rights of future generations by means of environmental protection; and conserve and enhance the biological diversity.³⁷⁰

According to a 2013 United Nations Development Programme (UNDP) report, no comprehensive structural or legal framework for natural resource management or nature conservation existed.³⁷¹

Participation & Access to Information

Communities may not have access to relevant information regarding environmental impacts that may affect their health or livelihoods. Particular attention should be paid to the mining sector.

The Environmental Management Act, adopted in 1996, outlines environmental impact assessment (EIA) processes and states that listed projects cannot be licensed and implemented until a satisfactory EIA has been completed and approved. The Ministry of Natural Resources, Energy and Environment publishes the list of projects that require EIAs, including in agriculture; food and beverage production; water delivery and conservation; infrastructure; and mining and quarrying.³⁷²

The law mandates EIAs to be open to public inspection and include public consultations. The most common methods of public consultations used in EIAs were notices, community meetings, public hearings, radio broadcasts and participation in community forums by using material incentives.³⁷³ The government has adopted guidelines to facilitate compliance with EIAs, including a reference that public participation should ensure women and children be actively involved in those processes, as they were the major resource users and managers.³⁷⁴ Failure to comply with EIA requirements is punishable by fines from MKW 5,000 (US\$11) to MKW 200,000 (US\$458) and imprisonment of up to two years.³⁷⁵

A 2013 study published by the African Journal of Environmental Science and Technology concluded that public participation in Malawi's EIA process was very low and that the lack of public information on the impacts of development projects had resulted in popular disapproval of initiatives that might have been helpful.³⁷⁶

The study also reported a decreasing trend in public consultations in recent years and that consultation processes, when conducted, were characterized by: a tendency of local chiefs to dominate negotiations; discussion of complex issues limiting the participation of communities with high illiteracy rates; lack of an independent monitoring of public participation; and inadequate time for public consultations.³⁷⁷

Malawi did not have any laws guaranteeing communities' engagement in processes of mineral extraction, according to Nyasa Times in 2014.³⁷⁸ Local communities, particularly in the central region, have been advocating for participation before licenses were awarded to mining operations, but this had not yet been granted.³⁷⁹

Food & Livelihoods

Companies may adversely impact the access of local populations to adequate and affordable food sources. Particular attention should be paid to the areas of agriculture and oil exploration.

According to a 2013 United Nations report, 11 percent of Malawians were food insecure.³⁸⁰ Approximately 8 in 10 families did not have access to food at some point of the year, according to The Guardian in 2015.³⁸¹ Low crop production, low food stocks and unstable maize supply were among the factors responsible for food insecurity, according to the World Food Programme.³⁸²

South Africa's Business Day reported in 2013 that recent land acquisitions by large commercial farming businesses could directly put the livelihoods of millions of Africans, including Malawians, at risk due to valuable agricultural land being used to produce food for exports.³⁸³ The World Bank reported in 2012 that land degradation and inappropriate farming methods increased soil erosion.³⁸⁴ This situation, according to a 2010 government report, limited agriculture productivity and required the expenditure of up to US\$300 million annually to replace soil nutrients in form of inorganic fertilisers.³⁸⁵

Local communities also expressed concerned over the potential impact of oil exploration in Lake Malawi that, according to a 2012 CNN report, provided livelihoods for local fishermen as it was the lake with most abundant fish species in the world.³⁸⁶

Deforestation

Companies may reduce forest resources to the detriment of the health or livelihoods of local populations. Particular attention should be paid to the agriculture sector and construction projects.

The 1997 Forestry Act regulates the sector and the 1996 National Forestry Policy provides with mechanisms for managing trees and forest on customary and public land.³⁸⁷ In 2005, the government developed Standards and Guidelines for Participatory Forestry to improve forest governance and rural livelihoods.³⁸⁸ According to a 2014 Food and Agriculture Organization report, Malawi's forest area made up 36 percent of its total territory, comprising 3.2 million hectares in 2011.³⁸⁹ There were 97 protected forest areas as of 2010.³⁹⁰

A joint report by government entities and NGOs published by the Centre for Environmental Policy and Advocacy (CEPA) in 2010 noted a lack of adequate funding for forest management and law enforcement activities.³⁹¹

The deforestation rate in Malawi was 2.5 percent annually, according to a 2013 UNDP report.³⁹² The CEPA report also noted that from 1972 to 1990, Malawi lost over 40 percent of forest coverage as a result of high population growth, opening previously forested land to agriculture, tobacco growing, biomass energy and brick burning.³⁹³ The tobacco industry depended on wood fuel for curing tobacco leaves, according to a 2014 Bertelsmann Foundation report.³⁹⁴ The government also reported that construction projects contributed to high levels of deforestation.³⁹⁵

Women and children were the most vulnerable to deforestation, as they reportedly had to spend more time in search for firewood and forest foods.³⁹⁶ CEPA reported that indigenous forests and woodland were areas had the highest prevalence of deforestation rates.³⁹⁷

Water

Companies may adversely impact the access of local populations to safe and affordable water for personal or other use. Particular attention should be paid to the areas of water pollution, contamination of drinking water and the agriculture and sand mining sectors.

A National Water Policy was adopted in 2005 to ensure that water management was adequately harmonised to make maximum contribution of water to the economic, social and environmental advancement and prosperity of the country.³⁹⁸ The Water Resources Act requires a permit to use and/or extract water or build dams.³⁹⁹ Wash Watch reported that the Department of Sanitation and Hygiene made good progress in providing leadership on sanitation in Malawi. It also reported that the coordinating body of Malawi's sanitation programme, the National Sanitation and Hygiene Coordination Unit had also made good progress in implementing the national water sanitation policy.⁴⁰⁰

A 2012 World Bank report stated that Malawi had enough water resources but they were not equally distributed or well managed.⁴⁰¹ According to a report by UNICEF and the World Health Organisation in 2012, 95 percent of people in urban areas and 80 percent in rural areas had access to safe drinking water.⁴⁰² Access to sanitation was significantly lower as only 49 percent of urban and 51 percent of rural dwellers used improved sanitation facilities, according to Water for the People in 2012.⁴⁰³

In relation to the agriculture sector, a 2013 government study published by the International Federation of Environmental Health (IFEH) reported that the use of artificial fertilisers and pesticides in the sector contributed to water pollution, affecting the health of local communities.⁴⁰⁴ Water for the People reported in 2012 that intense agriculture had contributed to water scarcity, and a growing population and drought in the rural areas were driving a stream of people to Blantyre and other cities to look for better opportunities, putting pressure on water resources around cities.⁴⁰⁵ Blantyre and Chikwawa were reportedly the regions most affected by water pollution.⁴⁰⁶

The IFEH study also noted that disposal of general and industrial waste into river sources, sand mining and farming contributed to high levels of pollution into water resources.⁴⁰⁷ The same year, All Africa highlighted pollution in the Lilongwe river as a result of waste disposal from development projects in Chigwirizano, Chinsapo and Likuni.⁴⁰⁸

Communicable diseases were on the rise due to inadequate safe water and sanitation, particularly in rural and peri-urban areas, according to the IFEH.⁴⁰⁹ Children and women were the most impacted by water scarcity as they were oftentimes required to walk long distances in search of clean water.⁴¹⁰

Air Pollution

The health and livelihoods of local populations may be adversely impacted by company operations. Particular attention should be paid agriculture, construction and mining.

In Malawi, there is no specific legislation addressing air pollution, though several legal instruments such as the Environmental Act, National Environmental Policy and the Malawi Energy Policy refer to the issue.⁴¹¹ Environmental impact assessments include air pollution.⁴¹²

The government stated that levels of air pollutions were low. However, a 2013 Journal for Environmental Protection (JPE) study found a lack of monitoring equipment and systems documenting air pollution levels in Malawi.⁴¹³

Approximately 1.4 percent of total mortality rate, 0.5 percent of all disability-adjusted life and 2 percent of all pulmonary diseases were related to outdoor pollution, according to the Journal of Environmental Protection in 2013.⁴¹⁴

The UNDP reported in 2012 that high levels of urbanisation have contributed to air pollution. The JEP study noted that the increasing number of vehicles and industrial activity, agriculture forestry and land

use for livestock production over the last couple of years had impacted Malawi's air quality.⁴¹⁵ The IFEH study also found in 2013 that bush fires and other activities related to the burning of wood fuel were major sources of air pollution in rural areas, together with construction, quarrying and coal mining activities.⁴¹⁶

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

An Environmental Appeals Tribunal was created to receive complaints related to the environment and natural resources. Any person, including the Minister of Natural Resources, Energy and Environment and the Director of Environmental Affairs, can bring an issue to the attention of the Tribunal.⁴¹⁷

At the administrative level, the Director of Environmental Affairs under the Ministry of Natural Resources, Energy and Environment has the power to issue environmental orders against any persons whose acts or omissions have or are likely to have adverse effects on the protection and management of the environment and the conservation and sustainable utilization of natural resources.⁴¹⁸

The Human Rights Commission (HRC), Malawi's National Human Rights Institution, has the mandate to investigate cases of human rights violations. The HRC has investigated complaints related to the negative impacts of businesses on the environment, particularly pollution that affected communities' livelihoods.⁴¹⁹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **December 2014, All Africa:** Kayelekera Uranium Mine reportedly disposed of untreated toxic waste from its uranium mining operation in to Lake Malawi, causing radioactive pollution. The disposal of toxic waste also threatened the lives of inhabitants in the surrounding area, as the lake provided water for drinking and domestic use, as well as fishing.⁴²⁰
- **November 2014, Business and Human Rights Resource Centre:** The government of Malawi decided to suspend oil and gas exploration in order to review licenses and ensure they benefited local communities.⁴²¹
- **February 2014, Bloomberg:** A truck transporting uranium oxide concentrate from Paladin Energy's Kayelekera Mine in northern Malawi fell on its side when navigating a curve in the road eight kilometres from the mine, spilling some uranium. The site was subject to a radiological check, and a spill response team removed the soil that had come into contact with the uranium.⁴²²
- **June 2013, All Africa:** Residents from Chikhwawa district complained about poor disposal of waste from the ethanol distillery Presscane Limited. They complained about bad smell and loss of land fertility, and suspected the waste to cause skin diseases, sight diseases and asthma.⁴²³

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Due Diligence Initiatives

Carlsberg Malawi: The company installed two wastewater treatment plants at two bottling sites. These treatment plants ensured that liquid waste from the production process was treated and reached acceptable standards before it was discharged into the environment.⁴²⁴

Illovo Sugar (2014): The company launched its Group Guidelines on Land and Land Rights. These guidelines include the requirement to conduct periodic assessments to monitor environmental, social and human rights risks and impacts in relation to their own operations as well as those of their suppliers. In particular, these assessments must be carried out prior to embarking on any new projects.⁴²⁵

Company Beyond Compliance Initiatives

Carlsberg Malawi: The company implemented environmental projects in Malawi, which included tree plantation to protect water sources and the environment.⁴²⁶

RAIPLY Malawi: The timber processing company has signed a forest plantation agreement with the Directorate of Forestry to plant trees in forest reserves. The company adopted a management plan and was engaged in activities in relation to replanting, protecting and managing areas that have been harvested.⁴²⁷

STECO and Chitakale Tea States: The companies allocated 200 hectares to plant, manage and harvest eucalyptus species for firewood in Amalika Forest Reserve and Thyolo.⁴²⁸

Paladin Energy: The company implemented a project to improve the reliability of the water supply to Karonga district in northern Malawi. It involved the repositioning of 760 metres of pipeline, and reportedly improved the pumping efficiency to the area significantly.⁴²⁹

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Precautionary Approach

Does the company support a precautionary approach to environmental issues?

- The company provides information to stakeholders about uncertainties and potential risks to workers, consumers, the public and the environment of the company's products and processes.
- The company identifies any soil and water contamination at its site or sites, assesses the environmental impacts and remedies any significant contamination.

- The company tries to avoid environmental damage by regular maintenance of production processes and environmental protection systems (air pollution control, waste water treatment systems etc.).
- The company conducts systematic risk assessments of materials used, products and processes to apply the precautionary approach.
- The company ensures transparency and engages in regular stakeholder dialogue with neighbours, civil society organisations and others with an interest in the company on critical environmental issues.
- If relevant, the company supports scientific research on environmental issues relating to the company's products and processes.

Emergency Response

Does the company have emergency procedures in place to prevent and address accidents affecting the environment and human health?

- The company has identified the hazardous operations and the potential consequences on human health and the environment if an accident occurs.
- The company has detailed procedures, plans, equipment and training programmes to prevent accidents and emergencies.
- The company has detailed procedures, plans and equipment to effectively respond to accidents and emergencies if they occur.
- The company trains workers to respond to accidents and emergencies, including carrying out emergency drills at least once a year involving all workers.
- Where there is significant risk of impacts on local communities, the company has a procedure that enables it to immediately notify affected local communities about industrial emergencies, and informs about emergency response, evacuation plans and medical response.

Energy Consumption and Climate Change

Does the company take measures to reduce energy consumption and emissions of greenhouse gases?

- The company complies with regulation regarding use of energy resources and emissions of greenhouse gases.
- The company has a climate strategy that identifies opportunities to reduce the company's energy consumption and/or emissions of greenhouse gases.
- The company has initiated practical activities to reduce energy consumption and/or greenhouse gas emissions.
- The company provides information and trains employees to implement energy reduction measures.
- The company monitors its energy consumption and/or emissions of greenhouse gases.
- The company has defined a baseline for its greenhouse gas emissions, which includes a definition of the business operations and activities, and the greenhouse gases that are accounted for e.g. as described in the Greenhouse Gas Protocol.
- The company has targets for reducing its energy consumption and/or emissions of greenhouse gases.
- The company engages with the government and civil society organisations to develop policies and measures that provide a framework for the business sector to contribute to building a low carbon economy.

Water and Waste Water

Does the company take measures to reduce water consumption and treat waste water?

- The company has the necessary permits to extract water or obtain water from the public water supply and for any waste water discharges.
- The company treats waste water before discharge to reduce adverse environmental impacts. If waste water treatment takes place outside the company's premises, the company is aware of the effectiveness of the treatment.
- The company monitors waste water discharges, including types, limit values and quantities of pollutants in the waste water.
- The company has targets for reducing water consumption and/or increasing the amount of water reused or recycled in different business operations and activities.
 - The company provides information and trains workers to implement measures to reduce water consumption and reduce the need for waste water treatment.
 - The company's use of water and its waste water discharges do not negatively affect the sustainability of water resources, the natural environment or the availability of water for drinking and sanitation purposes.

The company engages with national, regional and local public authorities, and civil society organisations to address water sustainability issues related to affected water resources.

Waste Management

Does the company take measures to prevent and reduce the production of waste and ensure responsible waste management?

- The company has the necessary permits for the handling, storage, recycling and disposal of waste, and, if relevant, complies with requirements for transporting hazardous waste across borders.
- The company has a strategy to manage waste responsibly and continuously attempts to prevent and reduce the production of waste.
- The company ensures that waste relevant for recycling is sorted and handed over to a recycling company.
- The company monitors the types and quantities of waste produced, including where and how waste is recycled, treated or disposed of.
- The company has targets for reducing waste production and/or increasing waste reused/recycled and measures its progress against these targets.
- The company provides information and trains workers on the safe handling, storage, transport and disposal of hazardous and special waste types.
- The company marks areas used for storage of waste, and properly labels all containers for storing waste, including a relevant symbol of danger for hazardous waste.
- The company requests recycling/treatment/disposal receipts from transport contractors.
- The company uses licensed contractors for the transport, recycling, treatment and disposal of hazardous waste.

Air Emissions

Does the company prevent, reduce and treat air emissions?

- The company has the necessary permits for emissions to air, and complies with legal requirements (e.g. air pollution standards and limit values).
- The company provides information and trains workers on how to manage air emissions.

- The company monitors the types and quantities of relevant emissions to air.
- The company treats relevant pollutants before they are emitted to the atmosphere (e.g. by using filters).
- The company continuously attempts to prevent and reduce air emissions.

Noise, Odour, Light and Vibrations

Does the company prevent and reduce impacts on the surrounding environment from noise, odour, light and vibrations?

- The company has the necessary permits for levels of noise, odour, light and vibrations, and complies with legal requirements (e.g. standards or procedures).
- The company provides information and trains workers to manage noise, odour, light and vibrations.
- The company monitors levels of noise, odour, light and vibrations on the surrounding environment.
- The company treats/minimises impacts to ensure that there are no significant levels of noise, odour, light and vibrations.
- The company continuously attempts to prevent and minimise the levels of noise, odour and light (e.g. enclosed production, shielding, etc.).

Chemicals and Other Dangerous Substances

Does the company minimise the use and ensure safe handling and storage of chemicals and other dangerous substances?

- The company has the necessary permits and complies with legal requirements for the handling, use and storage of chemicals and other dangerous substances.
- The company does not manufacture, trade and/or use chemicals and other dangerous substances subject to national or international bans or phase-outs.
- The company provides information and trains workers on the safe handling and use of chemicals and other dangerous substances.
- The company monitors the quantities of all chemicals and other dangerous substances used in production and maintenance.
- The company marks areas used for storage of chemical substances and products.
- The company properly labels all chemical substances and products including name of the chemical and a relevant symbol of danger.
- The company considers substitution important and continuously tries to use less harmful chemicals and substances.

Biodiversity

Does the company prevent, minimise and remedy significant impacts on biodiversity?

- The company has the necessary permits to operate in or alter the natural environment, and complies with legal requirements.
- The company is committed to operating within the framework of international conventions addressing biodiversity (e.g. the Convention on Biological Diversity, Cartagena Protocol on Bio-safety and the CITES Convention).

- The company has assessed important positive and negative impacts of its operations and activities on the natural environment and biodiversity (e.g. IUCN's Red List of Threatened Species and no alien invasive species).
- The company has previously and/or is currently taking measures to prevent and reduce the impacts of its operations and activities on biodiversity.
- The company clearly labels products containing GMOs and indicates if GMOs have been used in the production process.
- The company ensures that it has not had any unintended releases of GMOs.
- The company documents that workers have been adequately trained to handle GMOs.

Natural Resources

Does the company ensure that natural resources are used in a sustainable manner?

- The company has the necessary permits and complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc).
- The company complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc.).
- The company ensures that workers are trained in the sustainable cultivation, harvesting, extraction and/or use of natural resources.
- The company continuously attempts to prevent, minimise and remedy significant impacts on natural resources through environmentally friendly methods and alternative resource use.
- The company ensures that its use of renewable resources does not negatively affect the sustainability of the resource (i.e. the resource's ability to regenerate).
- The company demonstrates efforts to substitute non-renewable resources used in production with renewable resources.
- The company works with local and national public authorities as well as with international institutions to address sustainability issues related to natural resources (e.g. wood, water, fish, metals, oil etc.).

Environmentally Friendly Technologies

Does the company encourage the development and use of environmentally friendly technologies?

- The company uses environmentally friendly technology.
- The company regularly evaluates its processes and technologies to see if there are more environmentally friendly alternatives.
- When developing new technologies and products, the company focuses on developing environmentally friendly technology e.g. by using life cycle assessments (LCA), design for sustainability or a cradle-to-cradle approach.
- When planning new investments in technology, the company considers the best available technology and stipulates minimum environmental criteria.
- When investing in new buildings, the company implements environmentally responsible and resource-efficient materials and/or technologies.
- The company makes information describing the environmental performance and benefits of using environmentally friendly technologies available to stakeholders.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **CEO Water Mandate (2011):** Launched as a collaborative initiative of the UN, UN Global Compact, the Government of Sweden and a dedicated group of companies, the CEO Water Mandate is a public-private initiative designed to assist companies with the development, implementation and disclosure of policies and practices relating to water sustainability. It covers six core elements: direct operations, supply chain and watershed management, collective action, public policy, community engagement and transparency.
- **IFC Performance Standards on Environmental and Social Sustainability (2012):** The IFC Performance Standards provide directions to businesses on due diligence on environmental and social matters. Several of the standards are pertinent to environment, including: Assessment and Management of Environmental and Social Risks and Impacts (PS1), Resource Efficiency and Pollution Prevention (PS3), Community Health, Safety, and Security (PS4), and Biodiversity Conservation and Sustainable Management of Living Natural Resources (PS6).
- **Institute for Human Rights and Business, Business, Human Rights & the Right to Water— Challenges, Dilemmas and Opportunities:** This report summarises the views of various stakeholders on issues pertaining to the right to water, including consideration of the scope of a company's responsibility to respect the human right to water; the applicability of the human rights-based approach to management of water-related issues; and the business case for engaging with water-related issues.
- **ISO 14000 Standards on Environmental Management Systems:** Developed by the International Organisation for Standardisation, the ISO 14000 Standards provide businesses and organisations with a number of tools to assist in their environmental management systems. The key objective of the standards is to encourage different actors to reduce the negative impact that their activities may have on natural resources such as air, water or land.
- **United Nations Special Rapporteur on the Human Right To Safe Drinking Water and Sanitation (est. 2008):** Amongst a range of issues, the mandate of the Special Rapporteur includes consideration of the regulation of the private sector in the context of private provision of safe drinking water and sanitation.
- **Global Water Tool (2007):** Developed by the World Business Council for Sustainable Development, this tool is designed for companies and organisations to map their water use, including risks associated with water use in global supply chains.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Public hearings on Surestream Petroleum's proposed surveying activities in Lake Malawi (2014): The Environmental Affairs Department invited the general public in Karonga, Rumphi, Mzuzu, Nkhata Bay, Lilongwe, Nkhatakota and Blantyre to provide feedback on an environmental and social impact assessment (ESIA) devised by the international consultancy company RPS Group on Surestream Petroleum's proposed surveying activities for the exploration of oil in Lake Malawi.⁴³⁰

Mining Governance and Growth Support Project (2013): The project was launched by the Malawi government to increase sustainability in the mining sector by focusing on strategic environmental and social assessments. Through these assessments, the government is seeking to improve social and environmental benefits and strengthen cooperation with civil society.⁴³¹

National Food Insecurity Response Plan (2013): The government, with the support of the World Food Programme, implemented a humanitarian response to address populations unable to meet their annual food requirement. Food assistance was provided through targeted food and cash transfer.⁴³²

National Environment and Climate Change Communications Strategy (2012-2016): The strategy's goal is to provide information on environmental and climate change issues, and to promote positive behavioural change for sustainable development.⁴³³

Greenbelt Initiative (2010-present): The initiative aims to use available water resources to increase production, productivity, income and food security at the local and national levels. The initiative includes irrigation infrastructure development; water resources development; water supply and sanitation; land degradation prevention and pollution control; among others.⁴³⁴

Improved Forest Management for Sustainable Livelihoods Programme: The Ministry of the Environment and Climate Change, with the cooperation of the European Union, implements the programme that focuses on improving the management of trees and forest resources, improving access to income generating opportunities and enhancing rural livelihoods through sustainable management of forest areas in the country. The programme operates in 12 of Malawi's districts. Areas of intervention include tree planting and forest conservation, and promotion of forest based income-generating activities such as honey, mushroom and timber production and processing.⁴³⁵

National Water Development Programme: The government, with the cooperation of the African Development Bank, implements programmes that prioritise ensuring sufficient access to clean water to rural communities.⁴³⁶

Development Priorities

Malawi's Growth and Development Strategy II (2011-2016): The government prioritises promoting private sector participation in water provision as a key strategy for improving access to water.⁴³⁷

African Development Bank Malawi Country Strategy Paper (2013 – 2017): The strategy prioritises optimal use of shared water resources such as Lake Malawi, the Shire and the Songwe River Basins.⁴³⁸

The World Bank Country Assistance Strategy (2013-2016): The World Bank prioritises increasing the productivity of maize and rice to improve food security.⁴³⁹

United Nations Development Assistance Framework Action Plan (2012-2016): The UN prioritises mainstreaming climate change, environment, natural resources and disaster risk management.⁴⁴⁰

UN Special Rapporteur to the Right to Food (2013): The Special Rapporteur prioritises an effective national food security strategy to ensure that the most vulnerable people are not hit with malnutrition and poverty.⁴⁴¹

Land & Property

Human rights impacts related to company acquisition, use and management of land

Operating Environment	
International Property Rights Index rank	71 (2013)
Heritage Foundation: Economic Freedom Index Property Rights score	45 (2014)
Relevant law	<ul style="list-style-type: none">• Constitution of Malawi, 1994• Customary Land (Development) Act 1967• Control of Land (Agricultural Leases) Order 1989• Deeds Registration Act• Land Act, 1967• Land Acquisition Act, 1972• Land Amendment Act 2003• National Land Policy 2002Registered Land Act 1967
Responsible ministries	<ul style="list-style-type: none">• Ministry of Land, Housing and Urban Development• Ministry of Irrigation and Water Development
Local NGOs addressing this issue	<ul style="list-style-type: none">• Land Net Malawi• Centre for Human Rights and Rehabilitation

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Land Administration

Companies may disrupt the livelihoods of local populations if they do not establish the ownership and use of land before it is purchased.

A National Land Policy was adopted in 2002 to regulate all land issues. It focuses on land ownership, land use, land registration and national physical development plans, and establishes a legal framework for land use.⁴⁴² Its aim is to ensure tenure security and equitable access to land, facilitate social harmony and social and economic development through ecologically balanced use of land.⁴⁴³

According to the latest report (2010) from the Ministry of Natural Resources, Energy and Environment, major challenges in the land sector included lack of resources for land administration; insecure tenure regimes; weak institutional capacity; conflicting sectoral policies; and the lack of a policy for land use planning.⁴⁴⁴ The institutional framework for land management lacked coordination, was understaffed and had limited capabilities at the national and local levels, according to a 2010 report by the Food and Agriculture Organization.⁴⁴⁵

Three types of land tenure regimes exist in Malawi: customary, public and private. Customary land is administered by traditional leaders (chiefs) under customary law. The government administers public land for national development, security and tourism. Private land is owned, held or occupied under a freehold title, lease, certificate of claim, or as private land under the Registered Land Act of 1967.⁴⁴⁶

USAID's Land Tenure and Property Rights Portal reported that the land transfer system was a title registration system, which replaced the historic deeds registration system in 1967. The system conferred private ownership rights on the registered proprietor through a process of registration. Land transfer happened only if the transaction was formally recorded on the register at the Land Registry Office. Leasehold interests could be registered.⁴⁴⁷ Due to the former deed land transfer system, there was a legacy of fraudulent land transactions as it was difficult to trace land ownership, according to USAID.⁴⁴⁸

According to a 2013 United Nations Development Programme (UNDP) report, 65 percent of land was customary, 21 percent was public land and 14 percent was private.⁴⁴⁹ The government reported in 2010 that land was primarily used for agriculture and approximately 6 million smallholder farmers cultivated customary land.⁴⁵⁰ A 2013 Land Deal Politics Initiative (LDPI) study found that 55 percent of smallholders cultivated less than 1 hectare while approximately 30,000 estates cultivated from 10 to 500 hectares.⁴⁵¹

Land Distribution

Companies may adversely impact access to land for local populations, including land for production of food.

The Ministry of Natural Resources, Energy and Environment concluded in 2010 that inequitable land distribution was one of the challenges affecting the land sector.⁴⁵² Over 16 percent of the country's population was landless and 95 percent of the population held less than two hectares of land, according to the World Bank in 2014.⁴⁵³

The World Bank also noted that skewed land ownership posed challenges to agricultural and rural development. Since 80 percent of the population lived in rural areas, where land was governed by customary regime, the right to access to land was not secured, and was mostly unregistered and unrecognised by statutory law.⁴⁵⁴

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies. Particular attention should be paid to subsistence farmers, mining, corruption and lack of consultation.

The constitution guarantees that every person shall be able to acquire property alone or in association with others. Further to this, no person shall be arbitrarily deprived of property and expropriation is allowed only for public utility and by the provision of an appropriate compensation and notification.⁴⁵⁵ The 2003 Land (Amendment) Act capped the amount of freehold land held by foreigners and prohibited foreign individuals and companies from acquiring title to any freehold estate. Foreigners were allowed by law to lease land.⁴⁵⁶

Irin News reported in 2012 that government officials and chiefs were illegally selling customary land from smallholder farmers to estate farms and political elites.⁴⁵⁷ The Nyasa Times reported in 2013 concerns over the government awarding large pieces of land to foreign companies that were owned by local individuals and communities. This was of particular concern in relation to mining projects.⁴⁵⁸

Consultations with local communities in relation to their lands were uncommon and, when they were consulted, their views were not taken into consideration and the government oftentimes proceeded with the deals, according to the 2012 LDPI study.⁴⁵⁹

Land grabs from large farming companies, to the detriment of local community members' livelihoods and food security, were reported by LDPI.⁴⁶⁰ A 2010 Ministry of Natural Resources, Energy and Environment report noted that large estates displaced subsistence farmers from arable land to less fertile areas.⁴⁶¹ The report also noted that large tea estates forced small-hold farmers into small parcels of land, particularly in Mulanje and Thyolo.⁴⁶²

The New York Times reported in 2012 that most large tobacco farms, Malawi's largest export commodity, were owned by powerful and foreign investors.⁴⁶³ BBC also reported in 2014 that villagers were evicted from their lands in order to adjudicate those lands to sugar estates.⁴⁶⁴

In relation to resettlement, Malawi did not have any policy or legislation regulating it. However, according to the Catholic Commission for Justice and Peace (CCJP) in 2014, the government was applying international policy frameworks and best practices to supplement its domestic gap.⁴⁶⁵

The main issues related to mining projects included: the loss of male relatives, affecting single women who depended on male in-laws to help with manual labour; host community hostility as resettled communities were considered strangers and resettled in land that had a religious significance to them; increased school dropouts; and interruption to livelihoods as displaced communities were not familiar with soil conditions and rain patterns, according to CCJP in 2014.⁴⁶⁶

The government has declared customary land as public land without the payment of compensation to the owners, according to the government in 2010.⁴⁶⁷ The 2012 LDPI study reported that the government forced peasant farmers to sell or lease their land to foreign investors without compensation. Farmers were reportedly not provided with alternative land for cultivation. The study also noted that the government recorded different compensation figures than community members reported they had received.⁴⁶⁸

Cases of displacement of farmers in the District of Dowa for the extraction of minerals was reported in 2014 by Nyasa Times.⁴⁶⁹ Poor compensation was also reported.⁴⁷⁰ The CCJP reported that compensation due to mining activities was not transparently calculated, applied unclear eligibility criteria and did not reach the intended recipients.⁴⁷¹

The UNDP noted in 2013 that traditional leaders' allocation of land was unplanned and oftentimes became uncoordinated informal settlements that contributed to land-use conflicts never being resolved.⁴⁷² A 2012 Irin News article reported that due to this customary land allocation, local communities only enjoyed user's rights.⁴⁷³

Malawi has an active rental market and, according to the 2010 USAID Land Tenure and Property Portal, it was the most common avenue for poorer households to access land. It was reported that in certain areas, up to 90 percent of landholders were rented their land.⁴⁷⁴

Free, Prior & Informed Consent

Companies may fail to obtain the free, prior and informed consent of tribal communities when accessing or impacting on their lands and natural resources. Particular attention should be paid to mining concessions.

Malawi has not ratified ILO 169 Indigenous and Tribal Peoples Convention, which requires that indigenous and tribal peoples are consulted and engage on free, prior and informed consent in policy, and development processes that affect them.⁴⁷⁵ The government has, however, signed the UN Declaration on the Rights of Indigenous Peoples.⁴⁷⁶

According to the latest Census (2008), 12 tribes existed in Malawi. Largest tribes were the Chewa, Lomwe, Yao and Ngoni, concentrated in the Central Regions.⁴⁷⁷

A 2013 Malawi Voice article noted that communities from the northern region of Karonga and Chitipa were demanding that the government apply the free, prior and informed consent standard. Their livelihoods and lifestyles had been profoundly disrupted by mining companies operating near their communities. The communities demanded, among other things, providing communities affected by mining activities with information about projects and their potential impacts.⁴⁷⁸

Rights Holders at Risk

Company operations may have a disproportionate impact on access to land and property for particular societal groups. Particular attention should be paid to gender discrimination and HIV/AIDS widows.

The constitution of Malawi guarantees the right of women to acquire and maintain rights in property, independent or in association with others, regardless of their marital status.⁴⁷⁹

A 2010 government report noted that women had limited access to land and men commonly mediated their access to land.⁴⁸⁰ According to a 2012 UN Human Rights Committee report, the Deceased Estates (Wills, Inheritance and Protection) Act, adopted in 2011, contains provisions that violate women's rights, such as the appropriation of property from widows and the practice of widows being considered part of the inheritance to their brother-in-law or other male relatives.⁴⁸¹

The government further noted that joint land ownership of land by husband and wife was not common and that southern and central regions' inheritance systems secured more rights to women than the northern regions' customary laws. The high rates of persons with HIV/AIDS also impacted access to land, as surviving children and spouses were not allowed to continue using land that belonged to the deceased.⁴⁸² The 2010 USAID Portal noted that migrants and rural poor were among the most vulnerable groups in relation to access to land.⁴⁸³

A 2012 Land Deal Politics Initiative study found that the government prioritised giving land to foreign investors instead of redistributing it to the population, particularly to rural people and youth.⁴⁸⁴

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

The constitution recognises traditional or local courts that run parallel to the High Court. The courts were created to facilitate access to justice to rural communities.⁴⁸⁵ According to a 2013 International Bar Association report, they were the main source of redress for the majority of Malawians.⁴⁸⁶

In relation to land disputes, the judiciary's mandate was restricted to conflicts over trespass of property and unlawful occupation.⁴⁸⁷

Non-judicial, indigenous methods to resolve conflicts were commonly used in Malawi. Customary Justice Forums, presided over by chiefs, were especially important in resolving land disputes, and resolved more than 80 percent of land conflicts, according to UNDP in 2013.⁴⁸⁸ According to the 2010 USAID Land Tenure and Property Rights Portal, most land disputes occurred over land transactions, land access and inheritance rights.⁴⁸⁹

The 2012 Business Anti-Corruption Portal reported that bribery in civil and criminal cases concerning property rights was common.⁴⁹⁰

The NGO Centre for Human Rights and Rehabilitation received complaints in relation to land grabbing particularly from widows and orphans claiming the grabs were done by the their husband's relatives.⁴⁹¹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **December 2014, BBC:** Smallholder farmers in Dwangwa, central Malawi allegedly faced forced evictions by local police and the Cane Growers Trust, a sugar production promoter, due to the expansion of industrial farm projects. Local Malawian farmers were no longer able to grow subsistence crops, which exposed them to starvation and limited their children's access to education.⁴⁹²
- **January 2014, Malawi Voice:** Farmers in Thyolo demanded that all white estate owners hand over land to black Malawians, as it was unequally distributed.⁴⁹³
- **January 2014, Pambazuka News:** The high court announced that it would carry out sessions in the Dwangwa area to assess compensation for land paid to 80 farmers, who claimed they lost a total of 107 hectares of land to sugar plantations in 2007.⁴⁹⁴

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Due Diligence Initiatives

Globe Metals and Mining Malawi: The company has established a commitment on community engagement. It holds formal community consultation processes every six months with local chiefs and

representatives near its Kanyika Niobium project. Those consultations inform the community about the company's activities and intentions, and also commission feedback. Government officials also periodically participate.⁴⁹⁵

Illovo Sugar (2014): The company launched its Group Guidelines on Land and Land Rights. The guidelines include a zero tolerance approach to land grabs; the identification of any negative impact on land and land rights where they operate; the assurance that all affected owners and users of relevant land or property have been adequately consulted and compensated; and adheres to the Principle of free, prior and informed consent.

The company initiated a multi-stakeholder engagement process to resolve ongoing land conflicts among out-growers and community members in the Dwangwa area, which includes representatives from the local communities, out-growers organisations and the government, along with land experts, development partners and international NGOs to assist the communities in reaching a fair and equitable solution.⁴⁹⁶

Eastern Produce Tea Estate: Malawi's largest tea estate provides its employees and their dependants with free housing, constructed and maintained by the company. The houses are organised in villages of 40 to 80 houses, provided with potable water, waste management and sanitation, and managed by a village headman employed by the company who is in charge of the general housekeeping and its security. A total of 202 villages existed as of 2012.⁴⁹⁷

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Before buying, renting, acquiring or otherwise accessing land or property, does the company ensure that all affected owners and users of the land or property, have been adequately consulted and compensated?

- Prior to buying, renting, acquiring or otherwise accessing land or property, whether directly or through a third party, the company identifies all existing owners and users of the land or property, including information land users and customary owners.
- The company investigates the past usage and ownership of the land or property to ensure that past users and owners have not been wrongfully removed, and that any expropriations by the authorities have been conducted in accordance with international law.
- The company consults with affected users and owners of the land or property (including women, tenants, settlers, minorities and other vulnerable groups including indigenous peoples) and seeks their free, prior and informed consent before continuing to acquire or access the land or property.
- The company ensures that its lease or purchase of residential property and sourcing of food commodities does not considerably make housing and food scarce or too expensive for the local people.
- The company ensures that affected owners and users of the land or property are adequately compensated to help them restore their standards of living or livelihoods to the same or higher

than before, and that the compensation standards are transparent and applied consistently to all communities and persons affected.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **FAO Voluntary Guidelines on the Responsible Governance of Tenure (2012):** Developed by the Food and Agriculture Organisation of the UN (FAO), the Guidelines promote responsible governance of tenure of land, fisheries and forests by outlining the principles and internationally accepted standards for the responsible governance of tenure. The Guidelines inform States and non-government actors on relevant policies, strategies and activities.
- **IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement, and IFC Handbook for Preparing a Resettlement Action Plan (2002):** The IFC Performance Standards are contractually binding on certain projects receiving IFC finance. PS5 is accompanied by a Guidance Note and a Resettlement Handbook that gives detailed guidance on managing resettlement and associated impacts.
- **Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (2010):** A joint initiative of UNCTAD, FAO, IFAD and the World Bank, these seven principles cover all types of investment in agriculture, including between principal investors and contract farmers. The Principles provide a framework for national regulations, international investment agreements, global corporate social responsibility initiatives, and individual investor contracts.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

National Land Policy: The policy provides a framework for land administration. Among its objectives are ensuring secure tenure and equitable access to land; providing accountability and transparency in the administration of land; recognizing existing land rights, particularly customary rights of smallholders; and instilling order into land allocation and transactions to curb land encroachment.

NGO Initiatives

CCAP Blantyre Synod Malawi (2014): The organization implemented the Economic Empowerment of Women (EEW). The EEW project helped rural women in Chikwawa to secure their legal rights especially on land and property ownership by encouraging them to join Village Saving Loans (VSL), which in turn enabled them to do small scale businesses and farming as well as to take an active role in rural developmental projects. The project supported women's priorities, their incorporation in decision-making process and empowered them economically.⁴⁹⁸

Development Priorities

National Environmental Policy: The policy prioritises:

- Sustainable land use and development;
- Empowerment of local communities to manage common property resources in an environmental sustainable manner;
- Rehabilitation of highly degraded land; and
- Promoting sustainable productivity of leasehold land.⁴⁹⁹

Catholic Commission for Justice and Peace (2014): The organisation prioritises the assurance that in all cases of displacement and resettlement the livelihoods of affected people are at least restored.⁵⁰⁰

Revenue Transparency & Management

Human rights impacts related to transparency of government revenues received from business and the distribution of such revenues

Operating Environment	
World Economic Forum Global Competitiveness Ranking	136 out of 148 countries (2014)
Legatum Prosperity Index rank: Governance	70 out of 142 countries (2013)
Ease of Doing Business Index <i>(where 1 indicates greatest ease for doing business)</i>	171 out of 189 countries (2013)
Transparency International: Corruption Perceptions Index rank <i>(where 1 indicates the lowest level of corruption)</i>	91 out of 181 countries (2013)
World Bank Good Governance Indicators	(2012)
Voice and Accountability	-0.2
Political Stability	0.0
Government Effectiveness	-0.5
Regulatory Quality	-0.7
Rule of Law	-0.2
Control of Corruption	-0.5
Government revenue	\$1.264 billion (2014 est.)
Government expenditure	\$1.573 billion (2014 est.)
EITI Country	No
Relevant law	<ul style="list-style-type: none"> • Constitution of Malawi, 1994 • Taxation Act, 1964

	<ul style="list-style-type: none"> • Corrupt Practices Act, 1995 • Penal Code, 1999 • Public Procurement Act, 200 • Public Audit Act • Taxation Act
Responsible ministries	<ul style="list-style-type: none"> • Anti-Corruption Bureau • Malawi Revenue Authority • National Audit Office • Office of the Director of Procurement
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Human Rights Consultative Committee • Malawi Watch

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Corruption

Companies may pay bribes or use other coercive measures to unjustly influence government officials.

Giving or receiving a bribe, whether from a Malawian or foreign official, is a crime under the Penal Code.⁵⁰¹ The Corrupt Practices Act, adopted in 1995, guarantees the protection of whistle-blowers.⁵⁰²

The Anti-Corruption Resource Centre reported in 2012 that Malawi had strong anti-corruption laws and institutions, and initiatives by the private sector complemented the government’s efforts.⁵⁰³ However, the Centre also noted that the Anti-Corruption Bureau did not have budgetary independence or a secured tenure of senior management, which led to institutional bottlenecks that limited its operations at national and local government levels.⁵⁰⁴ Government agencies lacked capacity and willingness to fight against corruption, according to South Africa Sunday Times in 2014.⁵⁰⁵

The U.S. Department of State, citing an NGO report, stated in 2014 that corruption posed a serious challenge to Malawi’s future and that high-level political corruption, petty bribery, patronage and nepotism were widespread.⁵⁰⁶ A 2011 World Bank study found that corruption corresponded to a loss of approximately 5 percent of GDP.⁵⁰⁷

Corruption among midlevel government officials and statutory organisations occurred, according to a 2011 World Bank study. Political financing, embezzlement of government donor’s funds, corruption within embassies and petty corruption were reportedly common practices.⁵⁰⁸

The Business Anti-Corruption Portal further reported that decision-making when granting approval for investment was not based on merit or transparent. Corrupt practices also existed in the purchasing of land and the allocation of land for development.⁵⁰⁹

Customs administration was believed to be one of the most corrupt agencies, and public officials demanded facilitation payments, according to the 2012 Business and Anti-Corruption Portal.⁵¹⁰ The

Directorate of Road Traffic, Public Procurement, Parliament, political parties, the Administration General, the Malawi Revenue Authority and the Malawi Housing Corporation and Immigration were perceived to be the institutions with highest levels of corruption, according to a 2011 World Bank study.⁵¹¹

Revenue Transparency

There may be lack of public access to information concerning the size of public revenues generated from taxes, royalties and other fees paid by companies.

The constitution provides that every person shall have the right of access to all information held by the state or any of its organs at any level of government. As of 2014, Malawi did not have any access to information Law to compel the release of information proactively or upon request, according to Malawi Voice.⁵¹² In 2014 the government adopted an Access to Information Policy to guide how information is provided to enhance popular participation in development. The four priority areas include systematic storage of public information; institutional coordination; awareness on access to information; and transparency and accountability.⁵¹³

Public access to budgetary information to citizens and foreigners was reported. A 2011 Global Integrity report stated that the Minister of Finance held budgetary consultation meetings with a number of sectors of society for the purpose of gaining ideas and input from the public, including civil society organisations.⁵¹⁴

The Malawi Revenue Authority reports on gross tax revenues collected by the government.⁵¹⁵ The agency has established an E-Payments System to receive tax payments to reduce the potential of fraud and enhance efficiency.⁵¹⁶

International Budget Partnership reported in 2012 that in recent years, availability of information on the government's national budget and financial activities had improved.⁵¹⁷ According to a 2011 report by the Centre for Research on Multinational Corporation (SOMO), the government made public some of mining contracts' content.⁵¹⁸ However, Mining in Malawi stated in 2013 that information regarding the management of royalties, taxes and other payments was not sufficient to hold the government accountable to its use of public money.⁵¹⁹

Public Procurement

Companies may engage in corruption when bidding on public tenders. Particular attention should be paid to the areas of business interests of politicians and public officials and transparency.

The Public Procurement Act was adopted in 2003 to create transparency and competitiveness in the procurement of goods and services in the public sector.⁵²⁰ No Central tender board existed in Malawi. However, some ministries and departments had internal procurement committees.⁵²¹

A 2011 World Bank study found that the most common forms of corruption in tendering processes included procurement fraud (private or public) and the payment of bribes for contracts.⁵²²

A Centre for Social Research study noted that 9 percent of procurement contracts involved some kind of graft; companies seeking to do business with the government paid on average 14 percent as bribes; and that the estimated amount to secure a contract was 7 percent of its value, according to the World Bank in 2011.⁵²³ Government officials put forth their own businesses to be awarded public contracts, according to the South Africa Sunday Times in 2014.⁵²⁴

The Business Anti-Corruption Portal indicated in 2012 that some foreign investors bribed officials and politicians in order to secure contracts.⁵²⁵

Revenue Sharing

There may be lack of accountability concerning the usage and distribution of public revenues generated from taxes, royalties and other fees paid by companies. Particular attention should be paid to the areas of inadequate accounting of natural resource revenues.

The Taxation Act mandates that locally incorporated companies and companies in Export Processing Zones pay a 30 percent Income tax; mobile telecommunications companies 35 percent; and companies in priority industries 0 to 20 percent. The law does not, however, define priority industries.⁵²⁶

In relation to mining companies, they contribute with an additional resource rent tax of 10 percent on their income when their operating income is more than 20 percent of export value.⁵²⁷

Development agreements with mining companies reportedly included tax exemptions during the early years of operation.⁵²⁸ Malawi lost an estimated US\$44 million annually through these 'corporate incentives' to mining companies, as noted in 2014 by Equal Times.⁵²⁹

A 2011 World Bank study found that tax evasion corresponded to a loss of approximately 8 to 12 percent of GDP. The World Bank study estimated that if all taxes due were collected, revenue would increase by 50 percent.⁵³⁰

In 2014, the Malawi Miners Task Force stated that the country lost more than US\$15 billion worth of revenue annually as a result of uncharted sales and dubious mining operations, according to Nyasa Times. For instance, precious stones such as Nyala Ruby were exported and smuggled in the name of samples and the quality, quantities and the declared values of the stones exported did not represent their real value.⁵³¹

Global Integrity noted in 2011 allegations that enforcement of tax laws by the national tax collection agency were selective and favours were often given to individuals who had family or friends in the authority or in government.⁵³²

The National Environmental Policy, adopted in 1996, encourages community-based management and revenue sharing from the sustainable utilisation of natural resources on customary and public lands.⁵³³

Nyasa Times reported in 2014 that communities, particularly in the district of Dowa, were demanding greater participation in the benefits that were obtained by mining companies operating in their territories.⁵³⁴ A study published in 2015 by Mining in Malawi noted that there was a need to ensure more local benefits obtained from large-scale mining. Revenues from the extractive industry, the study further stated, should be held in a different, discrete account and not as part of Malawi's General Budget.⁵³⁵

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

A Director of Public Prosecutions has the power to institute and undertake criminal proceedings against a person before any court.⁵³⁶

At the administrative level, the Anti-Corruption Bureau has the power to examine the practices and procedures of public and private bodies to help facilitate the discovery of corrupt practices. Its Corruption Prevention and Education Division receives complaints of corrupt practices and investigates alleged offenses. If required by the Director of Public Prosecutions, the Division can prosecute any offence under the Anti-Corruption Act.⁵³⁷

The government created the agency of the Ombudsman, whose role is to provide remedies free of charge for people who have been subject to injustice arising from those in public office. According to a 2012 International Association of Anti-Corruption Authorities report, the Ombudsman investigated charges of corruption and tender irregularities.⁵³⁸

According to a 2012 U4 Anti-Corruption Resource Centre report, the judiciary, the Anti-Corruption Bureau and the Office of the Ombudsman had been effective in investigating and prosecuting lower level corruption cases.⁵³⁹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **January 2015, Zambia Reports:** The Chairman of the Finance Bank of Zambia was alleged to have bribed the former president of Malawi to politically intervene and restore his bank license to operate in the country, after having been banned in 2005 for money laundering. He allegedly promised the former president a US\$150 million bio thermal energy plant and a US\$30 million loan to buy maize and fuel.⁵⁴⁰
- **March 2014, Nyasa Times:** A man who ran a car rental firm was sentenced 18 months imprisonment for unlawful import of vehicles.⁵⁴¹
- **2014, Malawi Revenue Authority:** One person was convicted by the Magistrate's court in Blantyre for importing goods in June 2013 without declaring them to customs with the intent to evade duty. The man was fined and his goods were forfeited.⁵⁴²
- **July 2013, The Nation:** A former employee of Paladin filed a complaint to the Anti-Corruption Bureau, alleging that three top officials from the mining company bribed the police to hinder a case in which the former employee complained that he had been assaulted.⁵⁴³

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Due Diligence Initiatives

Vale: The company, which is engaged with the construction of a railroad in Malawi as part of the Nacala Corridor Project, adopted a Human Rights Policy recognising the UN Guiding Principles on Human Rights and Business. It established an Ombudsman Department for internal and external stakeholders to report any violation or alleged violation of its Code of Conduct, which includes accounting irregularities or improprieties; or any other issue related to accounting, auditing, internal controls, standards, policies and ethics. Complaints could be submitted by email, phone, letter or in person.⁵⁴⁴

Business Action Against Corruption (BAAC): The Malawi Global Compact Network, which includes 35 companies, adopted the initiative with the objectives of promoting business commitment to fighting corruption; assist the government's efforts to eliminate corruption; and pursue linkages with other private sector-led national and regional anti-corruption initiatives. It also provides a framework for good practices for businesses by drawing on various international initiatives and conventions.⁵⁴⁵

Illovo Sugar: The company has an anti-bribery and anti-corruption policy as part of its standard trading conditions that forbids any acts of bribery and corruption and requires suppliers to undertake anti-corruption training.⁵⁴⁶

Stakeholder Recommendations

Centre for Research on Multinational Corporations (2012): The Centre recommended multinational uranium corporations to disclose all payments to the government, on a disaggregated basis, following standards such as the EITI, the OECD Guidelines for Multilateral Enterprises, and the Global Compact Reporting Initiative.⁵⁴⁷

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Signalling a Non-Corrupt Environment

Does the company take a clear stand against corruption?

- The company's CEO, director or president has declared that the company will not engage in corruption at any time or in any form.
- The company has a policy rejecting corruption and requiring all directors, managers and workers worldwide to behave ethically and in conformity with the law.
- The company anti-corruption policy includes how to handle requests for facilitation payments, giving and receiving gifts, engaging in sponsorships, giving political contributions, and how to conduct responsible lobbying.
- The company has defined benchmarks and indicators regarding its anti-corruption initiatives and reports these to the public (e.g. in its annual CSR report)

Anti-Corruption Risk Assessment

Does the company assess the risk of corruption when doing business?

- The company evaluates the potential areas of corruption including factors such as type of transaction, countries of operation, industries, and customers or business partners involved.
- The company evaluates the risk of corruption when workers, agents, intermediaries or consultants deal with public officials (including workers of state owned companies).
- The company evaluates the risk of internal and external conflicts of interest in relation to business partners.
- The company has developed an action plan to address the risk of corruption, and has defined responsibilities for each task, as a minimum for high-risk areas.

- The company has identified internal functions with the highest risk of corruption within the company and seeks to address these weaknesses.

Awareness Raising

Does the company ensure that relevant workers are properly trained?

- The company informs all workers about its anti-corruption commitment.
- The company provides regular anti-corruption training for all relevant workers within the organisation e.g. procurement and sales staff.
- Information on disciplinary procedures for violations of company anti-corruption policies is available to workers.
- The company actively seeks worker feedback and dialogue on its anti-corruption initiatives.
- The company has and promotes a function by which workers can safely report suspicion of corruption related cases (e.g. hotline or mailbox) and allocates resources to systematically address the issues that are identified.

Anti-Corruption Procedures

Do the company's internal procedures support its anti-corruption commitment?

- The company has assigned different individuals or departments to be responsible for handling contracts, placing orders, receiving goods, processing invoices and making payments.
- The company mentions 'anti-corruption' and/or 'ethical behaviour' in its contracts with business partners.
- The company prohibits informal employment and any 'off the books' record-keeping
- The company performs internal audits and has checks in place in connection with all anti-corruption commitments.
- The company's procurement, financial and internal audit personnel have clear instructions to look for and to identify alarms, report them to management, and follow-up counter measures.
- The company requests external auditors to maintain a critical eye and follow all alarms and irregularities.
- Any alarm or irregularity reported by external auditors is systematically addressed by management.
- The company monitors compliance and continuously identifies strengths and weaknesses in the anti-corruption initiatives to remain effective and up-to-date in addressing changing risks.

Agents and Other Associates

Does the company's anti-corruption initiative cover agents, intermediaries and consultants?

- The company conducts an inquiry and/or attentiveness (e.g. financial, legal, labour, tax, IT, environment, market/commercial) on all agents, intermediaries and consultants.
- All agreements with agents, intermediaries and consultants are fully documented in written, signed contracts.
- The selection and terms of reference of agents, intermediaries or consultants are approved at the senior management level or at a level above that of the management involved in the operations for which the intermediary is hired.

- Contracts with agents, intermediaries and consultants include a section on anti-corruption and that the contract-holder must comply with all applicable laws and regulations.
- Agents, intermediaries and consultants are provided with information on the company's anti-corruption commitment, anti-corruption policies, training material on anti-corrupt behaviour and information on disciplinary procedures for violations of company anti-corruption policies.
- The company ensures that payment to agents, intermediaries and consultants are in line with standard payments for other service providers of similar ranking.
- The company only makes payments by bank transfer or check – never in cash – in the country of the agent, intermediary and consultant and never to a third party without prior examination.

Communicate

Does the company communicate progress on the Global Compact principles with stakeholders?

- The company identifies stakeholders who affect or can be affected by the company's activities, products and services e.g. a person, group, organisation, authority.
- The company communicates progress openly about how issues covered by the Global Compact principles are managed, including performance results as well as forward-looking information on strategy and management approach, challenges, and dilemmas.
- The company regularly engages in dialogue with stakeholders to keep up-to-date with stakeholder expectations.
- The company communicates openly about how issues covered by the Global Compact principles are managed including challenges, dilemmas, success and failures.
- The company's communication on progress and other performance reporting on issues covered by the Global Compact principles is publicly available and communicated to external stakeholders e.g. via the company's and Global Compact website.

Joint Actions

Does the company take joint actions with others to engage in and promote anti-corruption initiatives?

- The company shares experience, procedures and challenges of corruption with other organizations i.e. the local business community, sector initiatives, networks etc.
- The company has initiated or joined initiatives with other companies in the same sector for the purpose of promoting a fair business environment.
- The company stimulates multi-stakeholder dialogue on challenges of corruption.
- The company encourages the local business community and business partners to initiate cooperation to fight corruption.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **Transparency International Business Principles for Countering Bribery** provide a checklist for companies to identify and reduce bribes and facilitation payments in their operations.

- **The OECD Guidelines for Multinational Enterprises**, applicable to enterprises in OECD Member States (and some others), require companies to respect human rights, including through due diligence. The OECD Guidelines constitute recommendations by OECD member states to multinational enterprises operating in or from adhering countries. The OECD Guidelines include competition, fiscal systems and anti-corruption.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Mining Governance and Growth Support Project (2013): Among the objectives of the project increasing transparency in the mining sector, mitigating the risk of the resource curse and incorporating civil society to review expectations at the local level.⁵⁴⁸

Training of Tax Officers (2013): Thirty technical officers from the Malawi Revenue Authority (MRA) underwent a 6-month Advance Income Tax Course at the Institute of Tax Administration to assist the MRA collect more revenue from domestic taxes.⁵⁴⁹

Training to Smallholder Sugarcane Farmers on Taxation (2013): The MRA provided training to smallholder sugarcane farmers in Nkhotakota and Chikhwawa on taxation to improve tax compliance.⁵⁵⁰

Workshops on Anti-Corruption (2012-present): The Corruption Prevention Section under the MRA implements a workshop program for the public and private sectors to identify practices that are vulnerable to abuse and also to raise awareness within the organization on the pitfalls in their systems and procedures. Topics include accountability; fraud detection; investigative skills and corruption prevention.⁵⁵¹

Anti-Corruption Awareness Initiatives (2012): The Anti-Corruption Bureau implemented a number of anti-corruption education programmes that aimed to raise awareness of the negative impacts of corruption and to encourage local members of the community to report and resist it. These included billboards in urban areas, radio programmes, workshops, and anti-corruption clubs in schools and universities.⁵⁵²

Development Priorities

Malawi Growth and Development Strategy II (2011-2016): The government prioritises good corporate governance for the development of transparent and effective business systems.⁵⁵³

African Development Bank Malawi Country Strategy Paper (2013 – 2017): The strategy prioritises transparency in public procurement.⁵⁵⁴

The World Bank Country Assistance Strategy (2013-2016): The World Bank prioritises enhanced transparency on resource flows and service delivery.⁵⁵⁵

Security & Conflict

Human rights impacts related to company interaction with public and private security providers and related to the impact of business on societal conflict.

Operating Environment	
Failed States Index	40 out of 178 countries (2013)
Legatum Prosperity Index: Safety & Security	119 out of 142 countries (2013)
Freedom House: Map of Freedom - Political Rights <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	3 (2014)
Freedom House: Map of Freedom - Civil Liberties <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	4 (2014)
Relevant law	<ul style="list-style-type: none">• Constitution of Malawi, 1994
Responsible agencies	<ul style="list-style-type: none">• National Police

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Malawi was a conflict-free country and among the most peaceful nations in Africa, according to a 2011 World Bank report.⁵⁵⁶

The constitution guarantees that every person has the right to life and personal liberty, and that no person shall be arbitrarily deprived of life.⁵⁵⁷ The death sentence is allowed in Malawi,⁵⁵⁸ though mandatory death sentences were abolished in 2007.⁵⁵⁹ The UN Human Rights Committee noted in 2012 that the government had adopted a moratorium on the application of the death penalty, though some courts and tribunals continued to impose it for murder.⁵⁶⁰

Public Security Forces

Public security forces may infringe on the human rights of workers or local populations when protecting company sites and installations. Particular attention should be paid to excessive use of force, ill-treatment and harassment of journalist and human rights defenders.

The constitution of Malawi prohibits arbitrary arrest or detention, torture, inhumane or degrading treatment or punishment.⁵⁶¹

The Malawi Police has the mandate to maintain law and order while safeguarding the freedoms and rights of its people.⁵⁶² In 1995, Malawi adopted community based policing with the objective of developing a 'people-centred' organisation based on human rights principles.⁵⁶³

In 2012, the UN Human Rights Committee reported excessive use of force by police officers during arrest.⁵⁶⁴ Journalists and human rights defenders were reportedly subject to arrest, ill-treatment, harassment and prosecution when exercising their freedom of expression.⁵⁶⁵

Malawi's detention centres had the capacity to hold 5,000 inmates but, according to a 2013 International Commission of Jurists (ICJ) report, there were approximate 10,000 inmates in custody.⁵⁶⁶ The UN Committee further reported overcrowding in Malawi's prisons and precarious health care facilities that caused the death of some inmates.⁵⁶⁷ The Southern Africa Litigation Centre and the Centre for Human Rights Education, Advice and Assistance also reported in 2013 that there were a number of examples of inhumane treatment of vulnerable groups while in detention and the UN Human Rights Committee reported that some detainees were subject to torture and cruel or degrading treatment.⁵⁶⁸ In some cases, juvenile offenders were detained with adults, in contravention of the constitution, according to the ICJ.⁵⁶⁹

The Capital Radio of Malawi reported in 2014 that police officers were used to secure companies' facilities.⁵⁷⁰

Private Security Forces

Private security forces may infringe on the human rights of workers or local populations when protecting company sites and installations.

Malawi does not have any legislation regulating private security companies.⁵⁷¹

According to the latest report from the Small Arms Survey (2009), there were less than 10,000 private arms registered, one of the lowest in Africa.⁵⁷² The Observatory Gun Policy estimated in 2014 that 92,000 firearms were present in the country, both licit and illicit.⁵⁷³

Social Conflict

Companies may contribute to social conflict with or within communities. Particular attention should be paid to this issue when operating in rare earth elements regions.

According to a 2014 Environmental Justice Atlas report, Malawi had environmental conflicts in relation to the extraction of minerals, particularly uranium and rare earth elements. Local communities, including tribes, opposed the development of such projects due to alleged corruption between the government and extractive companies while negotiating deals. Communities were also concerned about environmental impacts, particularly exposure to nuclear waste and the lack of company measures to manage their impacts.⁵⁷⁴

Reports from several media sources indicated Malawians' growing discontent about foreigners. Chinese and Burundians, among others, were perceived to threaten Malawians' businesses.⁵⁷⁵ Foreign traders from Tanzania were reportedly subject to retaliatory attacks following several cases of abuses against

Malawians in Tanzania, according to a 2013 report by Banthu Times.⁵⁷⁶ Thai workers reportedly faced xenophobic attacks after they were employed to replace Malawian railway workers.⁵⁷⁷

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

An Independent Complaints Commission was created with the mandate to investigate cases of torture and death in police custody.⁵⁷⁸

The Human Rights Commission (HRC), Malawi's National Human Rights Institution, receives complaints on alleged human rights violations.⁵⁷⁹ The HRC received 11 complaints during 2013 in relation to the rights of prisoners and other detainees.

The ICJ reported in 2013 that police officers enjoyed impunity in relation to cases of torture or ill-treatment. If convicted, they were subject to administrative sanctions only.⁵⁸⁰

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **September 2013, Banthu Times:** Tanzanian traders in Mzuzu were subject to retaliatory attacks after Malawians in Tanzania were reportedly abused and attacked as a result of a Tanzanian government decree aiming to expel illegal immigrants.⁵⁸¹
- **July 2013, The Nation:** A former employee of Paladin filed a complaint to the Anti-Corruption Bureau alleging that three top officials from the mining company bribed the police to hinder a case in which the former employee alleged that he had been assaulted by the officials.⁵⁸²
- **June 2013, Equal Times:** Thai workers in Neno were targeted in xenophobic attacks following the dismissal of 1,500 Malawian railway workers who were then replaced by Thai nationals.⁵⁸³

Company Initiatives

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Company Beyond Compliance Initiatives

Lujeri Tea Estate: The company donated security equipment to the community police in the Mulanje district to help improve security.⁵⁸⁴

Mbadzi Tobacco: The company donated construction materials worth 500,000 MK (US\$1,146) to help the Madisi Police Unit improve the delivery of services.⁵⁸⁵

Satemwa Tea Estate: The company located in Thyolo supports the local community policing network with resources such as transport and communications from its own security department. Satemwa security officers are members of the District Community Policing Committee.⁵⁸⁶

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company take steps to ensure that company security arrangements are in accordance with international principles for law enforcement and the use of force?

- The company regularly conducts security risk assessments, and ensures that company security arrangements, including the deployment of private guards or public security personnel, are proportionate to the security risk.
- Company security risk assessments include the risk of human rights abuses by private and public security personnel.
- The company selects private security firms based on information about professional ability, level of staff training, quality of equipment, past involvement in human rights abuses, links with political factions or organisations and other relevant criteria.
- Contracts with private security firms include requirements related to international human rights standards for law enforcement and use of force; require the investigation and discipline of any unlawful or abusive conduct by security guards; and allow for termination of the contract in case of such conduct.
- There is a manual defining the duties of security personnel, and all security personnel receive training on rules of conduct based on international human rights standards for law enforcement and the use of force.
- Where public security personnel are assigned to company facilities, the company seeks to ensure transparency concerning its interactions with public security agencies, and the company communicates to the relevant public security agencies its desire that security functions be conducted in accordance with international human rights standards for law enforcement and the use of force.
- The company has a procedure for recording security-related incidents, including a mechanism for handling complaints from staff or local communities related to the conduct of security personnel, and forwards credible allegations of human rights abuses to the relevant authorities.
- The company has a procedure for monitoring and evaluating its security arrangements, including the proportionality of the security arrangement; impact on local communities; impact on existing local tensions or conflicts; security incidents recorded; and credible allegations of human rights abuses by company security personnel. Representatives from the local community are consulted as part of the monitoring.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **International Alert, Conflict Sensitive Business Practices: Guidance for Extractive Industries (2005):** International Alert is a peace-building NGO working with civilians and other affected stakeholders in conflict areas. This Guidance is intended for companies in the extractive industries sector, providing advice on conflict-sensitive business practices and the ways in which they can contribute to peace-building.
- **International Alert and Fafo Institute, Red Flags: Liability Risks for Companies Operating in High-Risk Zones (2008):** The Red Flags address illicit business activities under international and national law. The initiative's objective is to clearly define what types of activities, when committed or aided by businesses, represent breaches of international humanitarian law and international criminal law.
- **International Commission of Jurists, Report of the Expert Legal Panel on Corporate Complicity in International Crimes (2008):** This three volume report outlines the ICJ Expert Legal Panel's findings and recommendations with regard to corporate legal responsibility for complicity in international crimes, under both civil and criminal law.
- **The Dodd-Frank Wall Street Reform and Consumer Protection Act (2010):** Section 1502 of the Act requires public and private companies to disclose the use of any conflict minerals in their products. This promotes greater transparency and dissuades companies from engaging in trade that may support regional conflicts.
- **International Committee of the Red Cross, Business and International Humanitarian Law (2006):** The Guidance explains the obligations of businesses under international humanitarian law, including noting relevant distinctions between international human rights law and international humanitarian law.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Training for Enforcement Officials (2012): The government, in collaboration with the European Union, trained prison officers on their legal obligation in relation to the treatment of prisoners.⁵⁸⁷

Sector Profiles

Industry-specific human rights risks

Agriculture

Operating Environment	
Sector contribution to GDP (%)	37 (2013)
Sector contribution to employment (%)	80 (2013)
Major products	Maize, tobacco, sugar, tea.
Relevant laws	<ul style="list-style-type: none">• Fertiliser Act, 2003• Pesticides Act, 2000• Seed Act, 1996

Agriculture, including subsistence farming, is the primary livelihood for the majority of the Malawian population.⁵⁸⁸ Agriculture was the country's main source of growth and exports, according to the African Development Bank in 2013. The sector contributed approximately 37 percent of GDP and accounted for 82.5 percent of foreign exchange earnings.⁵⁸⁹ Sixty percent of foreign exchange was produced by tobacco alone in 2012, according to the World Bank.⁵⁹⁰

The total area of cultivation in Malawi is between 2.2 million and 2.5 million hectares, with more than 90 percent managed by small-scale farmers.⁵⁹¹ A 2012 African Development Bank report noted that 99 percent of agriculture land was under rain-fed cultivation.⁵⁹²

The main staple crop is maize, which was grown by smallholder farmers. Malawi's commercial farming sector is concentrated on large estates located in the south and around Lilongwe. Malawi is among the leading tobacco producers in the world, with sugar is the second largest crop in terms of foreign exchange.⁵⁹³ Malawi was also the second largest producer of tea in Africa, after Kenya, accounting for 10 percent of Africa's total tea production as of 2013.⁵⁹⁴

An estimated 80 percent of the labour force was employed in the agriculture sector as of 2013.⁵⁹⁵ Women constituted 70 per cent of the agricultural workforce in 2013, according to the UN Special Rapporteur on Food.⁵⁹⁶

There were approximately 50,000 persons employed on tea estates, according to Fair Trade in 2014.⁵⁹⁷ The sugar sector reportedly employed 15,400 people directly and 2,500 indirectly as of 2011.⁵⁹⁸

The National Agricultural Policy Framework prioritises increasing agricultural productivity to ensure food security, cash crop production, horticulture and agro-forestry. Key elements of the policy include promoting irrigation development; installing integrated water resource management; and promoting sustainable harvesting practices.⁵⁹⁹

The Malawi Growth and Development Strategy II 2012-2016 aims to enhance agricultural productivity, diversification and food security. It commits to doing so by enhancing the provision of effective

extension services; promoting diversification of agriculture for domestic and export markets; promoting dietary diversity; improving agricultural markets; increasing national food storage capacity; and reducing post harvest losses.⁶⁰⁰

The African Development Bank Malawi Country Strategy Paper 2013 – 2017 prioritises support to agriculture infrastructure development to contribute to agricultural productivity.⁶⁰¹

The World Bank Country Assistance Strategy 2013-2016 prioritises commercialising agriculture by more efficient and coordinated planning of tertiary, district and community road improvements and crop diversification.⁶⁰² The Bank also prioritises ensuring that female farmers have access to and use the same amount of key productive inputs as male farmers.⁶⁰³

Areas for Attention

Anti-Union Discrimination

Workers who engage in trade union activities may be subject to harassment or retaliation.

The International Trade Union Confederation stated in 2012 that union leaders had been subject to harassment, dismissal and arrest.⁶⁰⁴ Workers on tobacco and sugar plantations reported anti-union discrimination during the year.⁶⁰⁵

Barriers to Unionisation

Workers may be prevented from forming or joining independent worker's associations..

Farm owners and tobacco companies threatened tobacco workers with dismissal if they join a union. These threats reportedly weakened the power and voice of tobacco workers, and kept them from demanding better working conditions, according to The International Labour Rights Forum in 2012.⁶⁰⁶

Collective Bargaining

Workers may be prevented from engaging in collective bargaining.

There was no strong trade union in the tea sector, according to Equal Times in 2013. Two trade unions existed, but they were not acting together to improve working conditions but instead competing with each other to recruit members.⁶⁰⁷

Deforestation

Companies may reduce forest resources to the detriment of the health or livelihoods of local populations.

The deforestation rate in Malawi was 2.5 percent annually, according to a 2013 UNDP report.⁶⁰⁸ A report by the Centre for European Policy Analysis noted that from 1972 to 1990, Malawi lost over 40 percent of forest coverage as a result of opening forest to agriculture and tobacco plantations.⁶⁰⁹ The tobacco industry depended on wood fuel for curing tobacco leaves, according to a 2014 Bertelsmann Foundation report.⁶¹⁰

Women and children were the most vulnerable to deforestation, as they reportedly had to spend more time searching for firewood and forest foods.⁶¹¹ Indigenous forests and woodland reportedly had highest deforestation rates.⁶¹²

Forced Labour

Companies may deny workers the ability to freely enter and leave employment.

The International Labour Organisation reported in 2013 that cases of agricultural forced labour had been documented in tobacco production.⁶¹³ A common model of forced labour was debt bondage in which families were bonded under a tenancy system, according to a 2014 report by the U.S. Department of State.⁶¹⁴

The International Labour Rights Forum reported in 2012 that tobacco companies in Malawi took advantage of credit opportunities by selling agricultural chemicals and other inputs at above-market rates on loan. Through these loan arrangements, farmers were trapped into a cycle of debt.⁶¹⁵

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies.

A Land Deal Politics Initiative (LDPI) study noted land grabs from large farming companies to the detriment of local community members' livelihoods and food security.⁶¹⁶ Irin News reported in 2012 that government officials and chiefs were illegally selling customary land from smallhold farmers to estate farms and political elites.⁶¹⁷

Consultations with local communities in relation to their lands were uncommon and, when they took place, community views were not taken into consideration, according to the 2012 LDPI study.⁶¹⁸

A 2010 Ministry of Natural Resources, Energy and Environment report noted that large estates displaced subsistence farmers from arable land to less fertile areas, contributing to rural-urban migration.⁶¹⁹ The report also noted that large tea estates forced smallhold farmers onto small parcels of land, particularly in Mulanje and Thyolo.⁶²⁰

The New York Times reported in 2012 that most large tobacco estates, Malawi's largest export commodity, were owned by large foreign investors.⁶²¹ The BBC also reported in 2014 that villagers were evicted from their lands in order to convert those lands to sugar estates.⁶²²

The 2012 LDPI study found that the government forced peasant farmers to sell or lease their land to foreign investors, and often without compensation. Farmers were reportedly not provided with alternative land for cultivation, thus impacting their right to food. The central government also reportedly inflated figures given to villagers as compensation in public reports.⁶²³

Land Distribution

Companies may adversely impact access to land for local populations, including land for production of food.

The government reported in 2010 that land was primarily used for agriculture and that approximately 6 million smallhold farmers cultivated customary land.⁶²⁴ A 2013 Land Deal Politics Initiative (LDPI) study noted that 55 percent of smallholders cultivated less than 1 hectare while approximately 30,000 estates cultivated from 10 to 500 hectares.⁶²⁵

Occupational Health and Safety

Companies may not adequately prevent accidents and long-term health effects in the workplace.

Between 24 and 46 workplace accidents were reported every year in Malawi, but the majority of accidents went unreported, according to the International Labour Organization (ILO) in 2012.⁶²⁶ The

Ministry of Labour further stated that most workplaces did not report accidents or injuries, as reported in a joint publication by the ILO in 2012.⁶²⁷ The latest official data (2012) reported that agriculture, particularly tea estates, had the highest rates of occupational accidents.⁶²⁸

The ILO also reported that awareness of occupational safety and health issues was low among both the general public and policy makers, and workers rarely used personal protective clothing and equipment, even when they were provided by employers.⁶²⁹ In tobacco fields, the handling of leaves was reportedly done largely without protective clothing, causing dissolved nicotine to absorb through the skin, according to a 2014 report by the U.S. Department of State.⁶³⁰

Trafficking

Companies may employ workers who are subject to exploitative labour conditions through internal or external trafficking.

According to a 2014 report by the U.S. Department of State, there were reports of adults being trafficked into Malawi and forced to work in goat and cattle herding and in the agriculture sector on tea, tobacco and sugar plantations.⁶³¹

Wages

Workers may not be able to earn a living wage sufficient to meet the basic needs for themselves and their dependents.

The president of the Malawi Congress of Trade Unions (MCTU) stated in 2014 that the new minimum wage was based on the needs of the lowest earners, such as workers in tea estates and tobacco farms.⁶³² Fair Trade noted in 2014 that only 6 percent of workers in rural Malawi received a salary.⁶³³

Water

Companies may adversely impact the access of local populations to safe and affordable water.

A 2013 government study published by the International Federation of Environmental Health (IFEH) reported that the use of artificial fertilisers and pesticides in the agriculture sector contributed to water pollution, affecting the health of local communities dependant on the water.⁶³⁴ Water for the People reported in 2012 that intensive agriculture had contributed to water scarcity, and a growing population and drought in the rural areas were driving a stream of people to Blantyre and other cities to look for better opportunities, putting pressure on water resources.⁶³⁵

The IFEH study also noted that farming contributed to pollution of water resources.⁶³⁶

Women

Women may be at risk of discrimination in the workplace.

The U.S. Department of State noted in 2014 that 52 percent of full-time farmers were women.⁶³⁷ According to a World Bank study, female farmers had limited access to agriculture inputs such as fertilisers and extension services, resulting in 25 percent lower agricultural productivity than that of men.⁶³⁸

Violence against women was widespread, according to Human Rights Watch in 2014.⁶³⁹ The Nyasa Times reported in 2013 that high levels of gender-based violence were present on Malawi's sugar plantations. Many employers took advantage of illiterate workers, and that most cases were suppressed because victims preferred to protect their jobs rather than seek remedies.⁶⁴⁰

Equal Times reported in 2013 cases of harassment and sexual discrimination against women in tea estates.⁶⁴¹

Worst Forms of Child Labour

Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative.

Children were engaged in the worst forms of child labour, primarily in dangerous activities in the agriculture sector, according to the U.S. Department of State in 2013.⁶⁴² Children were commonly found working in tobacco farms and subsistence farms, according to the ILO in 2014.⁶⁴³

There were more than 78,000 children working on tobacco farms under conditions of long hours and low wages, some of whom were only five years old, according to the Mail & Guardian in 2011, and did not attend school regularly because work was prioritised over education.⁶⁴⁴

Al Jazeera reported in 2014 that children working on tobacco plantations were subject to 'hazardous manual labour, physical strain, dangerous environments, and long hours; often charged with strenuous tasks such as clearing the land, building tobacco drying sheds, weeding and plucking raw tobacco.'⁶⁴⁵

Children were reportedly at risk of 'green tobacco sickness', or nicotine poisoning, when cutting and bundling tobacco leaves. Symptoms included severe headaches, abdominal cramps, muscle weakness, breathing difficulties, diarrhoea and vomiting, high blood pressure and fluctuations in heart rate.⁶⁴⁶

Children sometimes applied pesticides with their bare hands, putting them at risk of serious neurological problems.⁶⁴⁷

Farms producing tea and sugar reported also child labour.⁶⁴⁸ Malawi was primarily a source country for trafficking of children, according to a 2014 report by the U.S. Department of State.⁶⁴⁹ The report noted that children may be subject to forced labour, including in goat and cattle herding and tobacco, tea, coffee, and sugar plantation).⁶⁵⁰ NGOs cited in the report noted a growing trend of traffickers using long-haul public transport buses to move three to four boys or young adults at a time from the southern region for forced labour on tobacco farms in the northern and central regions.⁶⁵¹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **December 2014, BBC:** Smallhold farmers in Dwangwa allegedly faced forced evictions by local police and the Cane Growers Trust, a sugar production promoter due to the expansion of large, industrial farm projects. Local Malawian farmers were no longer able to grow subsistence crops, which exposed them to starvation and limited their children's access to education.⁶⁵²
- **January 2014, Equal Times:** Illovo Sugar allegedly had a policy that required employees to ask for permission to arrange trade union meetings. In 2011 key strike leaders protesting for better wages were allegedly fired for holding meetings without permission from the company.⁶⁵³
- **January 2014, Malawi Voice:** Farmers in Thyolo demanded that all white estate owners hand over land to black Malawians, as it had been unequally distributed.⁶⁵⁴
- **January 2014, Equal Times:** Sub-contracted workers at Illovo Sugar Malawi were allegedly denied maternity leave, sick leave and overtime pay. They refrained from demanding better conditions due to fears of losing their jobs. They claimed that their costs of living could not be met by their minimum wage, and that it was not enough to pay for their children's school fees.⁶⁵⁵

- **January 2014, Pambazuka News:** The high court announced that it would carry out sessions in the Dwanga area to assess compensation for land paid to 80 farmers, who claimed they lost a total of 107 hectares of land to sugar plantations in 2007.⁶⁵⁶
- **March 2013, Nyasa Times:** Female workers near sugar plantations reportedly suffered from abuse. Courts were reportedly lenient on punishments in these cases of gender-based violence against women.⁶⁵⁷

Extractive

Operating Environment	
Sector contribution to GDP (%)	10
Major products	Iron ore, niobium, cement, gemstone, rare earths, mineral fuels, coal, uranium
Relevant laws	<ul style="list-style-type: none"> • The Mines and Minerals Act, 1981 • Petroleum Exploration Production Act, 1983

According to a 2012 African Development Bank report, the mining sector will be an important source of revenue, growth and employment for the country in the coming years.⁶⁵⁸ Major mining activities include coal mining, quarrying and uranium mining, the latter of which has reportedly grown an average of 30 percent annually since its discovery in 2009, particularly in Keyelekera.⁶⁵⁹

Mining contribution to GDP was estimated at 10 percent and is expected to rise to 20 percent, according to the Ministry of Environment and Climate Change Management in 2013.⁶⁶⁰ The Norwegian Church Aid/Catholic Commission for Justice and Peace, however, argued in a report from 2013 that the contribution of the mining industry was exaggerated, citing International Monetary Fund data showing that mining accounted for only 2.8 percent of GDP in 2010 and 2.8 percent in 2011.⁶⁶¹ The same report stated that the mining sector was a relatively small contributor to employment in Malawi, and was estimated to employ around 21,000 people, the majority of whom were artisanal, small-scale miners.⁶⁶²

According to Mining in Malawi in 2015, the oil and gas sector was in an exploratory stage, with potential hydrocarbon reserves located under Lake Malawi.⁶⁶³

The 2013 Mines and Minerals Policy seeks to stimulate and guide private mining investment by administering, regulating and facilitating the growth of the sector through a well-organized and efficient institutional framework. It aims to enhance the contribution of mineral resources to the economy and help the country transition from an agro-based to a mineral-based economy.⁶⁶⁴ The Malawi Growth and Development Strategy II 2012-2016 has established mining as a relevant sector and includes priorities such as enforcing legislation on sustainable use and management of mineral resources; providing infrastructure supporting mining development; and promoting participation of both local and foreign investors in the mining industries.⁶⁶⁵

The Mining Governance and Growth Support Project was financed and approved by the World Bank in 2011. It aims to strengthen the institutional capacity of the sector by modernising mining legislation; computerising mining cadastres; and producing health, safety, environmental and social management policies and monitoring systems. The project aim to improve social and environmental benefits for local communities.⁶⁶⁶

The World Bank also prioritises improving the efficiency, transparency and sustainability of the mining sector.⁶⁶⁷

Areas for Attention

Air Pollution

The health and livelihoods of local populations may be adversely impacted by company operations.

A 2013 study by the International Federation of Environmental Health (IFEH) reported that quarrying and coal mining activities were among the major sources of air pollution in Malawi.⁶⁶⁸

Food & Livelihoods

Companies may adversely impact the access of local populations to adequate and affordable food sources.

Local communities expressed concerned over the potential impact of oil exploration in Lake Malawi that, according to a 2012 CNN report, provided livelihood for local fishermen.⁶⁶⁹

Free, Prior & Informed Consent

Companies may fail to obtain the free, prior and informed consent of indigenous communities and tribes when accessing or impacting on their lands and natural resources.

According to the latest Census, from 2008, 12 tribes existed in Malawi. The largest tribes were the Chewa, Lomwe, Yao and Ngoni, located particularly in the central regions.⁶⁷⁰

A 2013 Malawi Voice article noted that communities from the northern region of Karonga and Chitipa have demanded that the government apply free, prior and informed consent when considering mining activities in their region.⁶⁷¹

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies.

In 2013, the Nyasa Times reported concerns over the government awarding large pieces of land to foreign companies. This was of particular concern in relation to mining projects.⁶⁷²

A number of resettlements to make way for mining operations have taken place. Human rights issues related to these resettlements included: the loss of male relatives, affecting single women who depended on male in-laws to help with manual labour; host community hostility as resettled communities were considered strangers and resettled in land that had a religious significance to them; increased school dropouts; and interruption to livelihoods as displaced communities were not familiar with soil conditions and rain patterns, according to Catholic Commission for Justice and Peace (CCJP) in 2014.⁶⁷³

Cases of displacement of farmers in the District of Dowa for the extraction of minerals was reported in 2014 by Nyasa Times.⁶⁷⁴ The CCJP study reported that compensation due to mining activities was not transparently calculated, was calculated under unclear eligibility criteria and did not reach its intended recipients.⁶⁷⁵

Occupational Health and Safety

Companies may not adequately prevent accidents and long-term health effects in the workplace.

The mining sector, particularly small scale mining, was characterised by poor working conditions, according to the ILO in 2012. Health and safety protections were non-existent, and the informality of the sector meant that accidents and fatalities were not reported.⁶⁷⁶

Participation & Access to Information

Potentially affected communities may not have access to relevant information regarding environmental impacts of company operations that may affect their health or livelihoods.

Malawi did not have any laws guaranteeing communities engagement in processes related to licensing or regulating mineral extraction, according to a 2014 Nyasa Times report.⁶⁷⁷ Local communities, particularly in the central region, were demanding to be consulted before licenses were awarded.⁶⁷⁸

Revenue Sharing

There may be lack of public access to accountability concerning the usage and distribution of public revenues generated from taxes, royalties and other fees paid by companies.

Development agreements with mining companies reportedly included tax exemptions during the early years of operation.⁶⁷⁹ Malawi lost an estimated US\$44 million annually through these 'corporate incentives' to mining companies, as noted in 2014 by Equal Times.⁶⁸⁰

In 2014, the Malawi Miners Task Force stated that the country lost more than US\$15 billion worth of revenue annually as a result of uncharted sales and dubious mining operations, according to Nyasa Times. For instance, precious stones such as Nyala Ruby were exported and smuggled in the name of samples and the quality, quantities and the declared values of the stones exported did not represent their real value.⁶⁸¹

The National Environmental Policy, adopted in 1996, encourages community-based management and revenue sharing from the sustainable utilisation of natural resources on customary and public lands.⁶⁸² Nyasa Times reported in 2014 that communities, particularly in the district of Dowa, were demanding greater participation in the benefits that were obtained by mining companies operating in their territories.⁶⁸³ A study published in 2015 by Mining in Malawi noted that there was a need to ensure more local benefits obtained from large-scale mining. Revenues from the extractive industry, the study further stated, should be held in a different, discrete account and not as part of Malawi's General Budget.⁶⁸⁴

Social Conflict

Companies may contribute to social conflict with or within communities.

According to a 2014 Environmental Justice Atlas report, Malawi had environmental conflicts in relation to the extraction of minerals, particularly uranium and rare earth elements. Local communities, including tribes, opposed the development of such projects due to alleged corruption between the government and extractive companies while negotiating deals. Communities were also concerned about

environmental impacts, particularly exposure to nuclear waste and the lack of company measures to manage their impacts.⁶⁸⁵

Water

Companies may adversely impact the access of local populations to safe and affordable water for personal or other use.

A 2013 International Federation of Environmental Health study noted that sand mining contributed to high levels of pollution into water resources.⁶⁸⁶

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **January 2015, Nyasa Times:** A former worker at Kayelekera Uranium Mine in Karonga experienced serious vision problems that consequently led to his dismissal. His medical report linked his eye problem to radiation exposure.⁶⁸⁷
- **December 2014, All Africa:** Kayelekera Uranium Mine reportedly disposed of untreated toxic waste from its uranium mining operation in to Lake Malawi, causing radioactive pollution. The disposal of toxic waste also threatened the lives of inhabitants in the surrounding area, as the lake provided water for drinking and domestic use, as well as fishing.⁶⁸⁸
- **November 2014, Business and Human Rights Resource Centre:** The government of Malawi decided to suspend oil and gas exploration in order to review licenses and ensure they benefit local communities.⁶⁸⁹
- **February 2014, Bloomberg:** A truck transporting uranium oxide concentrate from Paladin Energy's Kayelekera Mine in northern Malawi fell on its side when navigating a curve in the road eight kilometres from the mine, spilling some uranium. The site was subject to a radiological check, and a spill response team removed the soil that had come into contact with the uranium.⁶⁹⁰
- **September 2013, Nyasa Times:** One process operator working at Paladin Energy's Kayelekera Uranium Mine in northern Malawi was fired while being hospitalized at Mwaiwathu Private Hospital. Though the man allegedly suffered from a form of cancer that experts had linked to exposure to uranium radiation, the company did not pay his hospital bills. The man subsequently died. Paladin Energy maintained that radiation levels were safe and did not cause the death.⁶⁹¹
- **July 2013, Stockhouse:** A fatality occurred at Paladin Energy's Kayelekera Mine in northern Malawi when an employee working in the engineering workshop was struck in the chest by a light vehicle wheel during working hours. The findings of an investigation into the death were pending.⁶⁹²
- **July 2013, The Nation:** A former employee of Paladin filed a complaint to the Anti-Corruption Bureau, alleging that three top officials from the mining company bribed the police to hinder a case in which the former employee complained that he had been assaulted.⁶⁹³

Construction

Air Pollution

The health and livelihoods of local populations may be adversely impacted by company operations.

A 2013 government study published by the International Federation of Environmental Health (IFEH) reported that the construction sector was among the major sources of air pollution in Malawi.⁶⁹⁴

Deforestation

Companies may reduce forest resources to the detriment of the health or livelihoods of local populations.

The deforestation rate in Malawi was 2.5 percent annually, according to a 2013 UN Development Programme report.⁶⁹⁵ From 1972 to 1990, Malawi lost over 40 percent of forest coverage as a result of high population growth, opening previously forested land to agriculture and urbanization.⁶⁹⁶ The government reported that construction projects contributed to high levels of deforestation.⁶⁹⁷

Occupational Health and Safety

Companies may not adequately prevent accidents and long-term health effects in the workplace.

Fewer than 50 workplace accidents were reported every year in Malawi, but this figure only represented a small proportion of occupational accidents, as the majority went unreported, according to the International Labour Organization (ILO) in 2012.⁶⁹⁸ The Ministry of Labour also stated, in a joint publication by the ILO in 2012, that most workplaces did not report accidents or injuries.⁶⁹⁹ The latest official data, from 2012, indicated that the construction sector was among the sectors where most accidents occurred.⁷⁰⁰

Worst Forms of Child Labour

Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative.

Malawi was primarily a source country for trafficking of children, according to a 2014 report by the U.S. Department of State.⁷⁰¹ The report noted that children may be subject to forced labour, including in the construction sector.⁷⁰²

Region Profiles

Areas where human rights conditions or impacts differ markedly in nature or scale from the national profile.

Southern Region (Thyolo, Mulanje)

Tea production in Malawi was concentrated in the southern districts of Mulanje and Thyolo.⁷⁰³

Collective Bargaining

Workers may be prevented from engaging in collective bargaining.

There was no strong trade union in the tea sector, limiting tea workers' collective bargaining power, according to Equal Times in 2013. Two trade unions existed in the sector but they competed with each other to recruit members.⁷⁰⁴

Forced Labour

Companies may deny workers the ability to freely enter and leave employment.

The rural poor were particularly vulnerable to forced labour, according to a 2014 report by the U.S. Department of State.⁷⁰⁵

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies.

A 2010 Ministry of Natural Resources, Energy and Environment report noted that large estates displaced subsistence farmers from arable land to less fertile areas.⁷⁰⁶ The report also noted that large tea estates forced small-hold farmers into small parcels of land, particularly in Mulanje and Thyolo.⁷⁰⁷

Occupational Health and Safety

Companies may not adequately prevent accidents and long-term health effects in the workplace.

Latest official data from 2012 reported that sectors where most accidents occurred included the agriculture, particularly at tea estates.⁷⁰⁸

Rural Poor

Companies may negatively impact the health, livelihoods or access to basic services of poor rural populations.

Of Malawi's 15 million people, 50.7 percent lived in poverty as of 2011, according to Malawi's National Statistical Office.⁷⁰⁹ Most of the poor lived in rural areas and in the Southern regions.⁷¹⁰

Trafficking

Companies may employ workers who are subject to exploitative labour conditions through internal or external trafficking.

According to a 2014 report by the U.S. Department of State, adults had been trafficked into Malawi and forced to work in agriculture, including in tea estates.⁷¹¹

Wages

Workers may not be able to earn a living wage sufficient to meet the basic needs for themselves and their dependents.

Fair Trade noted in 2014 that only 6 percent of workers in rural Malawi received a salary. Approximately 50,000 persons were employed at tea estates, where wages were reportedly higher than the average rural wage when bonuses, overtime and in-kind benefits were included, but were still considered too low to provide a decent standard of living.⁷¹²

Women

Women may be at risk of discrimination in the workplace.

The U.S. Department of State noted in 2014 that 52 percent of full-time farmers were women.⁷¹³ Equal Times reported in 2013 cases of harassment and sexual discrimination against women in all tea estates.⁷¹⁴

Worst Forms of Child Labour

Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative.

Children were engaged in the worst forms of child labour, primarily in dangerous activities in the agriculture sector, according to the U.S. Department of State in 2013.⁷¹⁵ Farms producing tea reported child labour.⁷¹⁶

Central Region (Rural Lilongwe, Dowa, Kasungu),

The Central region is Malawi's primary tobacco-growing region.⁷¹⁷

Anti-Union Discrimination

Workers who engage in trade union activities may be subject to harassment or retaliation.

The International Trade Union Confederation stated in its latest annual report (2012) that union leaders had been subject to harassment, dismissal and arrest.⁷¹⁸ Workers on tobacco farms reported anti-union discrimination during the year.⁷¹⁹

Barriers to Unionisation

Workers may be prevented from forming or joining independent worker's associations.

Farm owners and tobacco companies threatened tobacco workers with dismissal if they joined a union, according to The International Labour Rights Forum in 2012. These threats weakened the power and voice of tobacco workers, and kept them from demanding better working conditions.⁷²⁰

Deforestation

Companies may reduce forest resources to the detriment of the health or livelihoods of local populations.

The deforestation rate in Malawi was 2.5 percent annually, according to a 2013 UN Development Programme report.⁷²¹ From 1972 to 1990, Malawi lost over 40 percent of forest coverage as a result of high population growth, opening previously forested land to agriculture, tobacco growing, biomass energy and brick burning.⁷²² The tobacco industry depended on wood fuel for curing tobacco leaves, according to a 2014 Bertelsmann Foundation report.⁷²³

Forced Labour

Companies may deny workers the ability to freely enter and leave employment.

The International Labour Organisation reported in 2013 that clear cases of agricultural forced labour were documented in relation to tobacco production.⁷²⁴ The International Labour Rights Forum reported in 2012 that tobacco companies in Malawi took advantage of credit opportunities by selling agricultural chemicals and other inputs at above-market rates on loan. Through these loan arrangements, farmers were trapped into a cycle of debt.⁷²⁵

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies.

The New York Times reported in 2012 that most large tobacco estates, Malawi's largest export commodity, were owned by large foreign investors.⁷²⁶

Occupational Health and Safety

Companies may not adequately prevent accidents and long-term health effects in the workplace.

In tobacco fields, the handling of the leaves was reportedly done largely without protective clothing, causing dissolved nicotine to absorb through workers' skin, according to a 2014 report by the U.S. Department of State.⁷²⁷

Worst Forms of Child Labour

Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative.

Children were engaged in the worst forms of child labour, primarily in dangerous activities in the agriculture sector, according to the U.S. Department of State in 2013.⁷²⁸ Children were commonly found working in tobacco farms, according to the ILO in 2014.⁷²⁹

There were more than 78,000 children working on tobacco farms for long hours and with low wages, some of whom were only five years old, according to the Mail & Guardian in 2011, and could not attend school regularly.⁷³⁰

Al Jazeera reported in 2014 that children working in tobacco farms were subject to 'hazardous manual labour, physical strain, dangerous environments, and long hours; often charged with strenuous tasks such as clearing the land, building tobacco drying sheds, and weeding and plucking raw tobacco.'⁷³¹ The report further pointed out the risk of children suffering a disease called green tobacco sickness, or nicotine poisoning, when cutting and bundling tobacco leaves, the symptoms of which included severe headaches, abdominal cramps, muscle weakness, breathing difficulties, diarrhoea and vomiting, high blood pressure and fluctuations in heart rate.⁷³² Children sometimes applied pesticides with their bare hands, which put them at risk of serious neurological problems.⁷³³

Malawi was primarily a source country for trafficking of children, according to a 2014 report by the U.S. Department of State.⁷³⁴ The report noted that children may be subject to forced labour including on tobacco farms.⁷³⁵

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